

ASSEMBLY BILL

No. 1663

Introduced by Assembly Members Evans and Lieber

February 23, 2007

An act to amend Sections 49076, 49076.5, 56026.1, 56031, 56033.5, 56058, 56059, 56171, 56173, 56301, 56321, 56329, 56341, 56341.5, 56344, 56345, 56345.1, 56346, 56363, 56380.1, 56381, 56500.2, 56500.3, 56500.4, 56501.5, 56502, 56505, 56515, 56600.6, and 56841 of, to add Sections 56040.1 and 56345.2 to, to add Article 5 (commencing with Section 56070) to Chapter 1 of Part 30 of Division 4 of Title 2 of, and to repeal and add Section 56028 of, the Education Code, relating to special education, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1663, as introduced, Evans. Special education: conformance to federal law.

(1) Existing law establishes a right of individuals with exceptional needs to receive free appropriate public education and ensures the right to special instruction and related services needed to meet their unique needs, in conformity with federal law.

This bill would make various revisions generally conforming state law to federal requirements relating to, among others, pupil identification, assessment, and eligibility; individualized education program development, including notice, implementation, and review; procedural safeguards, including due process hearing procedures and requirements; and pupil information confidentiality. The bill would also make clarifying, conforming, and other technical changes. To the extent

that these revisions would impose new duties on local educational agencies, the bill would impose a state-mandated local program.

(2) Existing law prohibits a school district from permitting access to pupil records to any person without written parental consent or judicial order, except as provided.

This bill would make various changes to access to those pupil record provisions to conform them to federal law.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 49076 of the Education Code is amended
2 to read:

3 49076. ~~A~~*In accordance with Part 99 (commencing with Section*
4 *99.1) of Title 34 of the Code of Federal Regulations, a school*
5 *district is not authorized to permit access to pupil records to any*
6 *a person without written parental consent or under judicial order*
7 *except that:*

8 (a) Access to those particular records relevant to the legitimate
9 educational interests of the requester shall be permitted to the
10 following:

11 (1) School officials and employees of the district, members of
12 a school attendance review board appointed pursuant to Section
13 48321, and ~~any~~ *a* volunteer aide, 18 years of age or older, who has
14 been investigated, selected, and trained by a school attendance
15 review board for the purpose of providing followup services to
16 pupils referred to the school attendance review board, provided
17 that the person has a legitimate educational interest to inspect a
18 record.

19 (2) Officials and employees of other public schools or school
20 systems, including local, county, or state correctional facilities
21 where educational programs leading to high school graduation are

1 provided or where the pupil intends to or is directed to enroll,
2 subject to the rights of parents as provided in Section 49068.

3 (3) Authorized representatives of the Comptroller General of
4 the United States, the Secretary of Education, and ~~administrative~~
5 ~~head of an education agency~~, state education officials, or their
6 respective designees, or the United States Office of Civil Rights,
7 where the information is necessary to audit or evaluate a state or
8 federally supported education program or pursuant to a federal or
9 state law, provided that except when collection of personally
10 identifiable information is specifically authorized by federal law,
11 ~~any~~ data collected by those officials shall be protected in a manner
12 ~~which~~ *that* will not permit the personal identification of pupils or
13 their parents by other than those officials, and ~~any~~ personally
14 identifiable data shall be destroyed when no longer needed for the
15 audit, evaluation, and enforcement of federal legal requirements.

16 (4) ~~Other state and local officials to the extent that information~~
17 ~~is specifically required to be reported~~ *In accordance with Section*
18 *99.31 of Title 34 of the Code of Federal Regulations, state and*
19 *local officials or authorities to whom such information is*
20 *specifically allowed to be reported or disclosed* pursuant to state
21 law adopted prior to November 19, 1974, *and state and local*
22 *officials or authorities to whom such information is specifically*
23 *allowed to be reported or disclosed pursuant to state law adopted*
24 *after November 19, 1974.*

25 (5) Parents of a pupil 18 years of age or older who is a dependent
26 as defined in Section 152 of the Internal Revenue Code of ~~1954~~
27 *1986.*

28 (6) A pupil 16 years of age or older or having completed the
29 10th grade who requests access.

30 (7) ~~Any~~ A district attorney who is participating in or conducting
31 a truancy mediation program pursuant to Section 48263.5, or
32 Section 601.3 of the Welfare and Institutions Code, or participating
33 in the presentation of evidence in a truancy petition pursuant to
34 Section 681 of the Welfare and Institutions Code *that has obtained*
35 *a lawfully issued subpoena or a court order.*

36 (8) A prosecuting agency *that has obtained a lawfully issued*
37 *subpoena or a court order* for consideration against a parent or
38 guardian for failure to comply with the Compulsory Education
39 Law (Chapter 2 (commencing with Section 48200) of Part 27) or

1 with Compulsory Continuation Education (Chapter 3 (commencing
2 with Section 48400) of Part 27).

3 (9) ~~Any~~A probation officer or district attorney *who has obtained*
4 *a lawfully issued subpoena or a court order* for the purposes of
5 conducting a criminal investigation or an investigation in regards
6 to declaring a person a ward of the court or involving a violation
7 of a condition of probation. *Law enforcement records may be*
8 *released without consent, a subpoena, or a court order.*

9 (10) ~~Any~~A judge or probation officer for the purpose of
10 conducting a truancy mediation program for a pupil, or for purposes
11 of presenting evidence in a truancy petition pursuant to Section
12 681 of the Welfare and Institutions Code *who has obtained a*
13 *lawfully issued subpoena or a court order.* The judge or probation
14 officer shall certify in writing to the school district that the
15 information will be used only for truancy purposes. A school
16 district releasing pupil information to a judge or probation officer
17 pursuant to this paragraph shall inform, or provide written
18 notification to, the parent or guardian of the pupil within 24 hours
19 of the release of the information.

20 (11) ~~Any~~A county placing agency for the purpose of fulfilling
21 the requirements of the health and education summary required
22 pursuant to Section 16010 of the Welfare and Institutions Code or
23 for the purpose of fulfilling educational case management
24 responsibilities required by the juvenile court or by law and to
25 assist with the school transfer or enrollment of a pupil. School
26 districts, county offices of education, and county placing agencies
27 may develop cooperative agreements to facilitate confidential
28 access to and exchange of the pupil information by electronic mail,
29 facsimile, electronic format, or other secure means.

30 (b) School districts may release information from pupil records
31 to the following:

32 (1) Appropriate persons in connection with an emergency if the
33 knowledge of the information is necessary to protect the health or
34 safety of a pupil or other persons.

35 (2) Agencies or organizations in connection with the application
36 of a pupil for, or receipt of, financial aid. However, information
37 permitting the personal identification of a pupil or his or her parents
38 may be disclosed only as may be necessary for purposes as to
39 determine the eligibility of the pupil for financial aid, to determine
40 the amount of the financial aid, to determine the conditions ~~which~~

1 *that* will be imposed regarding the financial aid, or to enforce the
2 terms or conditions of the financial aid.

3 (3) The county elections official, for the purpose of identifying
4 pupils eligible to register to vote, and for conducting programs to
5 offer pupils an opportunity to register to vote *if the pupil's parents,*
6 *or in the case of pupils 18 years of age or over, have not opted out*
7 *of participation in this voter registration activity.* The information,
8 however, shall not be used for any other purpose or given or
9 transferred to any other person or agency.

10 (4) Accrediting associations in order to carry out their
11 accrediting functions.

12 (5) Organizations conducting studies for, or on behalf of,
13 educational agencies or institutions for the purpose of developing,
14 validating, or administering predictive tests, administering student
15 aid programs, and improving instruction, if the studies are
16 conducted in a manner that will not permit the personal
17 identification of pupils or their parents by persons other than
18 representatives of the organizations and the information will be
19 destroyed when no longer needed for the purpose for which it is
20 obtained.

21 (6) Officials and employees of private schools or school systems
22 where the pupil is enrolled or intends to enroll, subject to the rights
23 of parents as provided in Section 49068. This information shall be
24 in addition to the pupil's permanent record transferred pursuant
25 to Section 49068.

26 A person, persons, agency, or organization permitted access to
27 pupil records pursuant to this section may not permit access to any
28 information obtained from those records by any other person,
29 persons, agency, or organization without the written consent of
30 the pupil's parent. However, this paragraph does not require prior
31 parental consent when information obtained pursuant to this section
32 is shared with other persons within the educational institution,
33 agency, or organization obtaining access, so long as those persons
34 have a legitimate *educational* interest in the information *pursuant*
35 *to Section 99.31 of Title 34 of the Code of Federal Regulations.*

36 (c) Notwithstanding any other provision of law, ~~any~~ a school
37 district, including ~~any~~ a county office of education or
38 superintendent of schools, may participate in an interagency data
39 information system that permits access *by authorized school*
40 *officials* to a computerized database ~~system within and between~~

1 ~~maintained by another governmental agency or district as~~ agency
2 to information or records ~~which~~ *that* are nonprivileged, and where
3 release is authorized as to the requesting agency under state or
4 federal law or regulation, if each of the following requirements
5 are met:

6 (1) Each agency and school district shall develop security
7 procedures or devices by which unauthorized personnel cannot
8 access data contained in the system.

9 (2) Each agency and school district shall develop procedures
10 or devices to secure privileged or confidential data from
11 unauthorized disclosure.

12 (3) Each school district shall comply with the access log
13 requirements of Section 49064.

14 (4) The right of access granted shall not include the right to add,
15 delete, or alter data without the written permission of the agency
16 holding the data.

17 (5) An agency or school district may not make public or
18 otherwise release information on an individual contained in the
19 database where the information is protected from disclosure or
20 release as to the requesting agency by state or federal law or
21 regulation.

22 (6) *A school district, including a county office of education or*
23 *superintendent of schools, shall not disclose information into this*
24 *interagency data information system.*

25 SEC. 2. Section 49076.5 of the Education Code is amended to
26 read:

27 49076.5. (a) Notwithstanding Section 49076, each school
28 district shall release any information it has specific to a particular
29 pupil's identity and location that relates to the transfer of that
30 pupil's records to another school district within this state or any
31 other state or to a private school in this state to a designated peace
32 officer, upon his or her request, when a proper police purpose
33 exists for the use of that information. *The designated peace officer,*
34 *or law enforcement agency, shall show the school district that the*
35 *peace officer or law enforcement agency has obtained prior written*
36 *consent from one parent, or provide information indicating that*
37 *there is an emergency in which the information is necessary to*
38 *protect the health or safety of the pupil, or has obtained a lawfully*
39 *issued subpoena or a court order.*

1 (b) In order to protect the privacy interests of the pupil, a request
2 to a school district for pupil record information pursuant to this
3 section shall meet the following requirements:

4 (1) For ~~the~~ purposes of this section “proper police purpose”
5 means that probable cause exists that the pupil has been kidnapped
6 and that his or her abductor may have enrolled the pupil in a school
7 and that the agency has begun an active investigation.

8 (2) Only designated peace officers and federal criminal
9 investigators and federal law enforcement officers, as defined in
10 Section 830.1 of the Penal Code, whose names have been submitted
11 to the school district in writing by a law enforcement agency, may
12 request and receive the information specified in subdivision (a).
13 Each law enforcement agency shall ensure that each school district
14 has at all times a current list of the names of designated peace
15 officers authorized to request pupil record information.

16 (3) This section does not authorize designated peace officers to
17 obtain any pupil record information other than that authorized by
18 this section.

19 (4) The law enforcement agency requesting the information
20 shall ensure that at no time shall ~~any~~ information obtained pursuant
21 to this section be disclosed or used for ~~any~~ a purpose other than
22 to assist in the investigation of suspected criminal conduct of
23 kidnapping. A violation of this paragraph shall be punishable as a
24 misdemeanor.

25 (5) The designated peace officer requesting information
26 authorized for release by this section shall make a record on a form
27 created and maintained by the law enforcement agency ~~which~~ *that*
28 shall include the name of the pupil about whom the inquiry was
29 made, the consent of a parent having legal custody of the pupil or
30 a legal guardian, the name of the officer making the inquiry, the
31 date of the inquiry, the name of the school district, the school
32 district employee to whom the request was made, and the
33 information that was requested.

34 (6) Whenever the designated peace officer requesting
35 information authorized for release by this section does so in person,
36 by telephone, or by some means other than in writing, the officer
37 shall provide the school district with a letter confirming the request
38 for pupil record information prior to any release of information.

39 (7) No school district, or official or employee ~~thereof~~ *of the*
40 *school district*, shall be subject to criminal or civil liability for the

1 release of pupil record information in good faith as authorized by
2 this section.

3 SEC. 3. Section 56026.1 of the Education Code is amended to
4 read:

5 56026.1. (a) As provided in ~~clause (i) of paragraph (3) of~~
6 ~~subsection (a) of Section 300.122~~ *Section 300.102(a)(3)(i)* of Title
7 34 of the Code of Federal Regulations, an individual with
8 exceptional needs who graduates from high school with a regular
9 high school diploma is no longer eligible for special education and
10 related services.

11 (b) For purposes of this section and Section 56026, a “regular
12 high school diploma” means a diploma conferred on a pupil who
13 has completed a prescribed course of study and has met the
14 standards of proficiency in basic skills prescribed by the governing
15 board of the school district.

16 (c) *As used in this section, and in accordance with Section*
17 *300.102(a)(3)(iv) of Title 34 of the Code of Federal Regulations,*
18 *“regular high school diploma” does not include an alternative*
19 *degree that is not fully aligned with the academic standards of the*
20 *State of California, such as a certificate or a general educational*
21 *development credential (GED).*

22 SEC. 4. Section 56028 of the Education Code is repealed.

23 56028. (a) ~~“Parent,” includes any of the following:~~

24 ~~(1) A person having legal custody of a child.~~

25 ~~(2) Any adult pupil for whom no guardian or conservator has~~
26 ~~been appointed.~~

27 ~~(3) A person acting in the place of a natural or adoptive parent,~~
28 ~~including a grandparent, stepparent, or other relative with whom~~
29 ~~the child lives. “Parent” also includes a parent surrogate.~~

30 ~~(4) A foster parent if the authority of a parent to make~~
31 ~~educational decisions on the child’s behalf has been specifically~~
32 ~~limited by court order in accordance with subsection (b) of Section~~
33 ~~300.20 of Title 34 of the Code of Federal Regulations.~~

34 ~~(b) “Parent” does not include the state or any political~~
35 ~~subdivision of government.~~

36 SEC. 5. Section 56028 is added to the Education Code, to read:

37 56028. (a) “Parent” means any of the following:

38 (1) A biological or adoptive parent of a child.

39 (2) A foster parent if the authority of the natural parents to make
40 educational decisions on the child’s behalf specifically has been

1 limited by court order in accordance with Section 300.30(b)(1) or
2 (2) of Title 34 of the Code of Federal Regulations.

3 (3) A guardian generally authorized to act as the child's parent,
4 or authorized to make educational decisions for the child.

5 (4) An individual acting in the place of a biological or adoptive
6 parent, including a grandparent, stepparent, or other relative, with
7 whom the child lives, or an individual who is legally responsible
8 for the child's welfare.

9 (5) A surrogate parent who has been appointed pursuant to
10 Section 7579.5 or 7579.6 of the Government Code, and in
11 accordance with Section 300.519 of Title 34 of the Code of Federal
12 Regulations and Section 1439(a)(5) of Title 20 of the United States
13 Code.

14 (b) (1) Except as provided in paragraph (2), the biological or
15 adoptive parent, when attempting to act as the parent under this
16 part and when more than one party is qualified under subdivision
17 (a) to act as a parent, shall be presumed to be the parent for
18 purposes of this section unless the biological or adoptive parent
19 does not have legal authority to make educational decisions for
20 the child.

21 (2) If a judicial decree or order identifies a specific person or
22 persons under paragraphs (1) to (5), inclusive, of subdivision (a)
23 to act as the "parent" of a child or to make educational decisions
24 on behalf of a child, then that person or persons shall be determined
25 to be the "parent" for purposes of this section.

26 (c) "Parent" does not include the state or any political
27 subdivision of government.

28 (d) "Parent" does not include a nonpublic, nonsectarian school
29 or agency under contract with a local educational agency for the
30 provision of special education or designated instruction and
31 services for a child.

32 SEC. 6. Section 56031 of the Education Code is amended to
33 read:

34 56031. (a) "Special education" means specially designed
35 instruction, at no cost to the parent, to meet the unique needs of
36 individuals with exceptional needs, whose educational needs cannot
37 be met with modification of the regular instruction program, and
38 related services, at no cost to the parent, that may be needed to
39 assist these individuals to benefit from specially designed
40 instruction.

1 ~~Special~~

2 **(b)** *Special* education is an integral part of the total public
3 education system and provides education in a manner that promotes
4 maximum interaction between children or youth with disabilities
5 and children or youth who are not disabled, in a manner that is
6 appropriate to the needs of both.

7 ~~Special~~

8 **(c)** *Special* education provides a full continuum of program
9 options, including instruction conducted in the classroom, in the
10 home, in hospitals and institutions, and in other settings; and
11 instruction in physical education, to meet the educational and
12 service needs of individuals with exceptional needs in the least
13 restrictive environment.

14 **(d)** *In accordance with Section 300.39 of Title 34 of the Code*
15 *of Federal Regulations, special education includes each of the*
16 *following, if the services otherwise meet the requirements of*
17 *subdivisions (a) to (c), inclusive:*

18 **(1)** *Speech-language pathology services, or any other designated*
19 *instruction and service or related service, pursuant to Section*
20 *56363, if the service is considered special education rather than*
21 *a designated instruction and service or related service under state*
22 *standards.*

23 **(2)** *Travel training.*

24 **(3)** *Vocational education.*

25 **(e)** *Transition services for individuals with exceptional needs*
26 *may be special education, in accordance with Section 300.43(b)*
27 *of Title 34 of the Code of Federal Regulations, if provided as*
28 *specially designed instruction, or a related service, if required to*
29 *assist an individual with exceptional needs to benefit from special*
30 *education.*

31 ~~Individuals~~

32 **(f)** *Individuals* with exceptional needs shall be grouped for
33 instructional purposes according to their instructional needs.

34 SEC. 7. Section 56033.5 of the Education Code is amended to
35 read:

36 56033.5. "Supplementary aids and services," as provided in
37 ~~paragraph (33) of Section 1401~~ *Section 1401(33)* of Title 20 of
38 the United States Code *and in Section 300.42 of Title 34 of the*
39 *Code of Federal Regulations*, means aids, services, and other
40 supports that are provided in regular education classes or other

1 education-related settings *and in extracurricular and nonacademic*
2 *settings*, to enable individuals with exceptional needs to be
3 educated with nondisabled children to the maximum extent
4 appropriate in accordance with ~~paragraph (5) of subsection (a) of~~
5 ~~Section 1412~~ *Section 1412(a)(5)* of Title 20 of the United States
6 *Code and Sections 300.114 to 300.116, inclusive, of Title 34 of*
7 *the Code of Federal Regulations.*

8 SEC. 8. Section 56040.1 is added to the Education Code, to
9 read:

10 56040.1. In accordance with Section 1412(a)(5) of Title 20 of
11 the United States Code and Section 300.114 of Title 34 of the Code
12 of Federal Regulations, each public agency shall ensure the
13 following to address the least restrictive environment for
14 individuals with exceptional needs:

15 (a) To the maximum extent appropriate, individuals with
16 exceptional needs, including children in public or private
17 institutions or other care facilities, are educated with children who
18 are nondisabled.

19 (b) Special classes, separate schooling, or other removal of
20 individuals with exceptional needs from the regular educational
21 environment occurs only if the nature or severity of the disability
22 is such that education in the regular classes with the use of
23 supplementary aids and services cannot be achieved satisfactorily.

24 SEC. 9. Section 56058 of the Education Code is amended to
25 read:

26 56058. Special education teachers providing instruction and
27 educational services under this part shall meet the same “highly
28 qualified” requirements, as defined in ~~paragraph (10) of Section~~
29 ~~1401~~ *Section 1401(10)* of Title 20 of the United States Code, *and*
30 *in Section 300.18 of Title 34 of the Code of Federal Regulations,*
31 *and personnel qualifications described in paragraph (14) of*
32 ~~subsection (a) of Section 1412~~ *Section 1412(a)(14)* of Title 20 of
33 the United States Code, *and in Section 300.156 of Title 34 of the*
34 *Code of Federal Regulations.*

35 SEC. 10. Section 56059 of the Education Code is amended to
36 read:

37 56059. (a) This part does not create a right of action on behalf
38 of an individual with exceptional needs or class of pupils for failure
39 of a state or local educational agency employee to be highly
40 qualified.

1 (b) *In accordance with Section 300.156(e) of Title 34 of the*
2 *Code of Federal Regulations, nothing in this part prevents a parent*
3 *from filing a complaint with the department under Section 56500.2,*
4 *and under Sections 300.151 to 300.153, inclusive, of Title 34 of*
5 *the Code of Federal Regulations, about staff qualifications.*

6 SEC. 11. Article 5 (commencing with Section 56070) is added
7 to Chapter 1 of Part 30 of Division 4 of Title 2 of the Education
8 Code, to read:

9
10 Article 5. Qualifications for Designated Instruction and Services
11 Personnel, Related Services Personnel, and Paraprofessionals
12

13 56070. (a) In accordance with Section 1412(a)(14)(A) and (B)
14 of Title 20 of the United States Code and Section 300.156(a) and
15 (b) of Title 34 of the Code of Federal Regulations, qualifications
16 for designated instruction and services personnel and
17 paraprofessionals shall include the following:

18 (1) Be consistent with a state-approved or state-recognized
19 certification, licensing, registration, or other comparable
20 requirements that apply to the professional discipline in which
21 those personnel are providing special education or designated
22 instruction and services.

23 (2) Ensure that personnel who deliver services in their discipline
24 or profession meet the requirements of this subdivision and have
25 not had certification or licensure requirements waived on an
26 emergency, temporary, or provisional basis.

27 (3) Allow paraprofessionals and assistants who are appropriately
28 trained and supervised, in accordance with state law, regulation,
29 or written policy, in meeting the requirements of this part to be
30 used to assist in the provision of special education and designated
31 instruction under this part to individuals with exceptional needs.

32 (b) Local educational agencies shall take measurable steps to
33 recruit, hire, train, and retain highly qualified personnel to provide
34 special education, designated instruction and services, and related
35 services under this part to individuals with exceptional needs.

36 SEC. 12. Section 56171 of the Education Code is amended to
37 read:

38 56171. ~~Local~~ Pursuant to Section 300.131 of Title 34 of the
39 *Code of Federal Regulations, local* educational agencies shall
40 locate, identify, and assess all private school children with

1 disabilities, including religiously affiliated schoolage children,
2 who have disabilities and are in need of special education and
3 related services ~~residing in the jurisdiction~~ *attending private school*
4 *in the service area* of the local educational agencies *where the*
5 *private school is located* in accordance with Section 56301. The
6 activities undertaken to carry out this responsibility for private
7 school children with disabilities shall be comparable to activities
8 undertaken in accordance with ~~the provisions of clause (ii) of~~
9 ~~subparagraph (A) of paragraph (10) of subsection (a) of Section~~
10 ~~1412 Section 1412(a)(10)(A)(ii) of Title 20 of the United States~~
11 ~~Code.~~

12 SEC. 13. Section 56173 of the Education Code is amended to
13 read:

14 56173. To meet the requirements of Section 56172, each local
15 educational agency shall provide special education and related
16 services to pupils with disabilities enrolled by a parent in private
17 elementary and secondary schools, described in Section 56171,
18 by expending an amount of federal state grant funds allocated to
19 the state under Part B of the federal Individuals with Disabilities
20 Education Act (20 U.S.C. Sec. 1400 et seq.) equal to a
21 proportionate amount of federal funds made available under the
22 Part B grant program for local assistance, in accordance with ~~clause~~
23 ~~(i) of subparagraph (A) of paragraph (10) of subsection (a) of~~
24 ~~Section 1412 Section 1412(a)(10)(A)(i) of Title 20 of the United~~
25 ~~States Code and Section 300.453 300.133 of Title 34 of the Code~~
26 ~~of Federal Regulations. In accordance with Section 300.131(d) of~~
27 ~~Title 34 of the Code of Federal Regulations, the cost of carrying~~
28 ~~out the child find requirements in Section 56171 cannot come from~~
29 ~~the proportional share of federal grant funds received pursuant~~
30 ~~to this section and Section 300.133 of Title 34 of the Code of~~
31 ~~Federal Regulations since those funds are required to be spent on~~
32 ~~the provision of services to the pupils with disabilities enrolled by~~
33 ~~a parent in private elementary and secondary schools.~~

34 The control of public funds used to provide special education
35 and related services ~~under subparagraph (A) of paragraph (10) of~~
36 ~~subsection (a) of Section 1412 Section 1412(a)(10)(A) of Title 20~~
37 ~~of the United States Code, and title to materials, equipment, and~~
38 ~~property purchased with those funds, shall be in a public agency~~
39 ~~for the uses and purposes provided in the federal Individuals with~~

1 Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.). A public
2 agency shall administer the funds and property.

3 SEC. 14. Section 56301 of the Education Code is amended to
4 read:

5 56301. (a) All children with disabilities residing in the state,
6 including children with disabilities who are homeless children or
7 are wards of the state and children with disabilities attending
8 private, including religious, elementary and secondary schools,
9 regardless of the severity of their disabilities, and who are in need
10 of special education and related services, shall be identified,
11 located, and assessed and a practical method is developed and
12 implemented to determine which children with disabilities are
13 currently receiving needed special education and related services
14 as required by ~~paragraph (3) of subsection (a), and clause (ii) of~~
15 ~~subparagraph (A) of paragraph (10) of subsection (a), of Section~~
16 ~~1412 Section 1412(a)(3) and (10)(A)(ii) of Title 20 of the United~~
17 ~~States Code. A child is not required to be classified by his or her~~
18 ~~disability so long as each child who has a disability listed in~~
19 ~~paragraph (3) of Section 1401 Section 1401(3) of Title 20 of the~~
20 ~~United States Code and who, by reason of that disability, needs~~
21 ~~special education and related services as an individual with~~
22 ~~exceptional needs defined in Section 56026.~~

23 (b) (1) In accordance with ~~Section 300.125 300.111(c)~~ of Title
24 34 of the Code of Federal Regulations, the requirements of this
25 section also apply to highly mobile individuals with exceptional
26 needs, ~~such as including~~ migrant ~~and homeless~~ children, and
27 children who are suspected of being an individual with exceptional
28 needs pursuant to Section 56026 and in need of special education,
29 even though they are advancing from grade to grade.

30 (2) *In accordance with Section 300.213 of Title 34 of the Code*
31 *of Federal Regulations, the local educational agency shall*
32 *cooperate in the efforts of the federal Secretary of Education,*
33 *under Section 6398 of Title 20 of the United States Code, to ensure*
34 *the linkage of records pertaining to migratory children with*
35 *disabilities for the purpose of electronically exchanging, among*
36 *other states, health and educational information regarding those*
37 *children.*

38 (c) (1) The child find process shall ensure the equitable
39 participation in special education and related services of parentally
40 placed private schoolchildren with disabilities and an accurate

count of those children. Child find activities conducted by local educational agencies, or where applicable, the department, shall be similar to those activities undertaken for pupils in public schools.

(2) In accordance with ~~subclause (IV) of clause (ii) of subparagraph (A) of paragraph (10) of subsection (a) of Section 1412~~ *Section 1412(a)(10)(A)(ii)(IV)* of Title 20 of the United States Code, the cost of the child find activities in private, including religious, elementary and secondary schools, may not be considered in determining whether a local educational agency has met its obligations under the proportionate funding provisions for children enrolled in private, including religious, elementary and secondary schools.

(3) The child find process described in paragraph (1) shall be completed in a time period comparable to that for other pupils attending public schools in the local educational agency.

(d) (1) Each special education local plan area shall establish written policies and procedures pursuant to Section 56205 for use by its constituent local agencies for a continuous child find system that addresses the relationships among identification, screening, referral, assessment, planning, implementation, review, and the triennial assessment. The policies and procedures shall include, but need not be limited to, written notification of all parents of their rights under this chapter, and the procedure for initiating a referral for assessment to identify individuals with exceptional needs.

(2) In accordance with ~~subparagraph (A) of paragraph (1) of subsection (d) of Section 1415~~ *Section 1415(d)(1)(A)* of Title 20 of the United States Code, *and Section 300.504(a) of Title 34 of the Code of Federal Regulations*, parents shall be given a copy of their rights and procedural safeguards only one time a year, except that a copy also shall be given to the parents ~~upon~~:

(A) *Upon* initial referral or parental request for assessment; ~~upon~~.

(B) *Upon receipt of the first state complaint under Section 56500.2.*

(C) *Upon the first occurrence in a school year of the filing for a due process hearing under Section 56502, and upon request by a parent.*

1 (D) When a decision is made to make a removal that constitutes
2 a change of placement of an individual with exceptional needs
3 because a violation of a code of pupil conduct in accordance with
4 Section 300.530(h) of Title 34 of the Code of Federal Regulations.

5 (E) Upon request by a parent.

6 (3) A local educational agency may place a current copy of the
7 procedural safeguards notice on its Internet Web site, if such Web
8 site exists, pursuant to ~~subparagraph (B) of paragraph (1) of~~
9 ~~subsection (d) of Section 1415~~ Section 1415(d)(1)(B) of Title 20
10 of the United States Code.

11 (4) The contents of the procedural safeguards notice shall
12 contain the requirements listed in ~~paragraph (2) of subsection (d)~~
13 ~~of Section 1415~~ Section 1415(d)(2) of Title 20 of the United States
14 Code and Section 300.504(c) of Title 34 of the Code of Federal
15 Regulations.

16 (e) Child find data collected pursuant to this chapter, or collected
17 pursuant to a regulation or an interagency agreement, are subject
18 to the confidentiality requirements of ~~Section 300.125 and Sections~~
19 ~~300.560 300.611 to 300.577~~ 300.627, inclusive, of Title 34 of the
20 Code of Federal Regulations.

21 SEC. 15. Section 56321 of the Education Code is amended to
22 read:

23 56321. (a) If an assessment for the development or revision
24 of the individualized education program is to be conducted, the
25 parent or guardian of the pupil shall be given, in writing, a proposed
26 assessment plan within 15 days of the referral for assessment not
27 counting days between the pupil's regular school sessions or terms
28 or days of school vacation in excess of five schooldays from the
29 date of receipt of the referral, unless the parent or guardian agrees,
30 in writing, to an extension. However, in any event, the assessment
31 plan shall be developed within 10 days after the commencement
32 of the subsequent regular school year or the pupil's regular school
33 term as determined by each district's school calendar for each
34 pupil for whom a referral has been made 10 days or less prior to
35 the end of the regular school year. In the case of pupil school
36 vacations, the 15-day time shall recommence on the date that the
37 pupil's regular schooldays reconvene. A copy of the notice of a
38 parent's or guardian's rights shall be attached to the assessment
39 plan. A written explanation of all the procedural safeguards under
40 the federal Individuals with Disabilities Education Act (20 U.S.C.

1 Sec. 1400 et seq.), and the rights and procedures contained in
2 Chapter 5 (commencing with Section 56500), shall be included in
3 the notice of a parent's or guardian's rights, including information
4 on the procedures for requesting an informal meeting, prehearing
5 mediation conference, mediation conference, or due process
6 hearing; the timelines for completing each process; whether the
7 process is optional; and the type of representative who may be
8 invited to participate.

9 (b) The proposed assessment plan given to parents or guardians
10 shall meet all the following requirements:

11 (1) Be in language easily understood by the general public.

12 (2) Be provided in the native language of the parent or guardian
13 or other mode of communication used by the parent or guardian,
14 unless to do so is clearly not feasible.

15 (3) Explain the types of assessments to be conducted.

16 (4) State that no individualized education program will result
17 from the assessment without the consent of the parent.

18 (c) (1) The local educational agency proposing to conduct an
19 initial assessment to determine if the child qualifies as an individual
20 with exceptional needs shall *make reasonable efforts to* obtain
21 informed consent from the parent of the child before conducting
22 the assessment, in accordance with ~~subparagraph (D) of paragraph~~
23 ~~(4) of subsection (a) of Section 1414~~ *Section 1414(a)(1)(D)* of
24 Title 20 of the United States Code. ~~If~~

25 (2) *If* the parent of the child does not provide consent for an
26 initial assessment, or the parent fails to respond to a request to
27 provide the consent, the local educational agency may, *but is not*
28 *required to*, pursue the initial assessment utilizing the procedures
29 described in Section 1415 of Title 20 of the United States Code
30 and in accordance with paragraph (3) of subdivision (a) of Section
31 56501 and subdivision (e) of Section 56506. ~~The~~

32 (3) *In accordance with Section 300.300(a)(3)(ii) of Title 34 of*
33 *the Code of Federal Regulations, the local educational agency*
34 *does not violate its obligation under Section 300.111 and Sections*
35 *300.301 to 300.311, inclusive, if it declines to pursue the*
36 *assessment.*

37 (4) *The* parent or guardian shall have at least 15 days from the
38 receipt of the proposed assessment plan to arrive at a decision. The
39 assessment may begin immediately upon receipt of the consent.

~~(d) The local educational agency shall not be required to obtain informed consent from the parent of a child for an initial assessment to determine whether the child is an individual with exceptional needs under any of the following circumstances listed in subclause (H) of clause (iii) of subparagraph (D) of paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code:~~

~~(1) Despite reasonable efforts to do so, the local educational agency cannot discover the whereabouts of the parent of the child.~~

~~(2) The rights of the parent of the child have been terminated in accordance with state law.~~

~~(3) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial assessment has been given by an individual appointed by the judge to represent the child.~~

~~(e)~~

~~(d) Consent for initial assessment may not be construed as consent for initial placement or initial provision of special education and related services to an individual with exceptional needs, pursuant to subclause (I) of clause (i) of subparagraph (D) of paragraph (1) of subsection (a) of Section 1414 Section 1414(a)(1)(D)(i)(I) of Title 20 of the United States Code.~~

~~(f)~~

~~(e) In accordance with paragraph (3) of subsection (a) of Section 300.505 Section 300.300(d)(1) of Title 34 of the Code of Federal Regulations, parental consent is not required before reviewing existing data as part of an assessment or reassessment, or before administering a test or other assessment that is administered to all children, unless before administration of that test or assessment, consent is required of the parents of all the children.~~

~~(g)~~

~~(f) Pursuant to subparagraph (E) of paragraph (1) of subsection (a) of Section 1414 Section 1414(a)(1)(E) of Title 20 of the United States Code, the screening of a pupil by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an assessment for eligibility for special education and related services.~~

~~(g) In accordance with Section 300.300(d)(5) of Title 34 of the Code of Federal Regulations, to meet the reasonable efforts requirement in subdivision (c), the local educational agency shall~~

1 *document its attempts to obtain parental consent using the*
2 *procedures in subdivision (h) of Section 56341.5.*

3 SEC. 16. Section 56329 of the Education Code is amended to
4 read:

5 56329. As part of the assessment plan given to parents or
6 guardians pursuant to Section 56321, the parent or guardian of the
7 pupil shall be provided with a written notice that shall include all
8 of the following information:

9 (a) (1) Upon completion of the administration of tests and other
10 assessment materials, an individualized education program team
11 meeting, including the parent or guardian and his or her
12 representatives, shall be scheduled, pursuant to Section 56341, to
13 determine whether the pupil is an individual with exceptional needs
14 as defined in Section 56026, and to discuss the assessment, the
15 educational recommendations, and the reasons for these
16 recommendations.

17 (2) In making a determination of eligibility under paragraph
18 (1), a pupil shall not, pursuant to ~~paragraph (5) of subsection (b)~~
19 ~~of Section 1414~~ *Section 1414(b)(5) of Title 20 of the United States*
20 *Code, and Section 300.306(b) of Title 34 of the Code of Federal*
21 *Regulations*, be determined to be an individual with exceptional
22 needs if the determinat factor for the determination is ~~any one~~ of
23 the following *in subparagraphs (A) to (C), inclusive, plus*
24 *subparagraph (D)*:

25 (A) Lack of appropriate instruction in reading, including the
26 essential components of reading instruction as defined in ~~paragraph~~
27 ~~(3) of Section 6368~~ *Section 6368(3) of Title 20 of the United States*
28 *Code*.

29 (B) Lack of *appropriate* instruction in mathematics.

30 (C) Limited-English proficiency.

31 (D) *If the pupil does not otherwise meet the eligibility criteria*
32 *under Section 300.8(a) of Title 34 of the Code of Federal*
33 *Regulations*.

34 (3) A copy of the assessment report and the documentation of
35 determination of eligibility shall be given to the parent or guardian.

36 (b) A parent or guardian has the right to obtain, at public
37 expense, an independent educational assessment of the pupil from
38 qualified specialists, as defined by regulations of the board, if the
39 parent or guardian disagrees with an assessment obtained by the
40 public education agency, in accordance with Section 300.502 of

1 Title 34 of the Code of Federal Regulations. If a public education
2 agency observed the pupil in conducting its assessment, or if its
3 assessment procedures make it permissible to have in-class
4 observation of a pupil, an equivalent opportunity shall apply to an
5 independent educational assessment of the pupil in the pupil's
6 current educational placement and setting, and observation of an
7 educational placement and setting, if any, proposed by the public
8 education agency, regardless of whether the independent
9 educational assessment is initiated before or after the filing of a
10 due process hearing proceeding.

11 (c) The public education agency may initiate a due process
12 hearing pursuant to Chapter 5 (commencing with Section 56500)
13 to show that its assessment is appropriate. If the final decision
14 resulting from the due process hearing is that the assessment is
15 appropriate, the parent or guardian maintains the right for an
16 independent educational assessment, but not at public expense.

17 If the parent or guardian obtains an independent educational
18 assessment at private expense, the results of the assessment shall
19 be considered by the public education agency with respect to the
20 provision of free appropriate public education to the child, and
21 may be presented as evidence at a due process hearing pursuant
22 to Chapter 5 (commencing with Section 56500) regarding the child.
23 If a public education agency observed the pupil in conducting its
24 assessment, or if its assessment procedures make it permissible to
25 have in-class observation of a pupil, an equivalent opportunity
26 shall apply to an independent educational assessment of the pupil
27 in the pupil's current educational placement and setting, and
28 observation of an educational placement and setting, if any,
29 proposed by the public education agency, regardless of whether
30 the independent educational assessment is initiated before or after
31 the filing of a due process hearing proceeding.

32 (d) If a parent or guardian proposes a publicly financed
33 placement of the pupil in a nonpublic school, the public education
34 agency shall have an opportunity to observe the proposed
35 placement and the pupil in the proposed placement, if the pupil
36 has already been unilaterally placed in the nonpublic school by
37 the parent or guardian. ~~Any~~ An observation conducted pursuant to
38 this subdivision shall only be of the pupil who is the subject of the
39 observation and may not include the observation or assessment of
40 any other pupil in the proposed placement. The observation or

1 assessment by a public education agency of a pupil other than the
2 pupil who is the subject of the observation pursuant to this
3 subdivision may be conducted, if at all, only with the consent of
4 the parent or guardian pursuant to this article. The results of ~~any~~
5 *an* observation or assessment of any other pupil in violation of this
6 subdivision shall be inadmissible in ~~any~~ *a* due process or judicial
7 proceeding regarding the free appropriate public education of that
8 other pupil.

9 SEC. 17. Section 56341 of the Education Code is amended to
10 read:

11 56341. (a) Each meeting to develop, review, or revise the
12 individualized education program of an individual with exceptional
13 needs shall be conducted by an individualized education program
14 team.

15 (b) The individualized education program team shall include
16 all of the following:

17 (1) One or both of the pupil's parents, a representative selected
18 by a parent, or both, in accordance with the federal Individuals
19 with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

20 (2) Not less than one regular education teacher of the pupil, if
21 the pupil is, or may be, participating in the regular education
22 environment. If more than one regular education teacher is
23 providing instructional services to the individual with exceptional
24 needs, one regular education teacher may be designated by the
25 local educational agency to represent the others.

26 The regular education teacher of an individual with exceptional
27 needs ~~shall~~, to the extent appropriate, *shall* participate in the
28 development, review, and revision of the pupil's individualized
29 education program, including assisting in the determination of
30 appropriate positive behavioral interventions and supports, and
31 other strategies for the pupil, and the determination of
32 supplementary aids and services, program modifications, and
33 supports for school personnel that will be provided for the pupil,
34 consistent with ~~subclause (IV) of clause (i) of subparagraph (A)~~
35 ~~of paragraph (1) of subsection (d) of Section 1414~~ *Section*
36 *1414(d)(1)(A)(i)(IV)* of Title 20 of the United States Code.

37 (3) Not less than one special education teacher of the pupil, or
38 if appropriate, not less than one special education provider of the
39 pupil.

(4) A representative of the local educational agency who meets all of the following:

(A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of individuals with exceptional needs.

(B) Is knowledgeable about the general *education* curriculum.

(C) Is knowledgeable about the availability of resources of the local educational agency.

(5) An individual who can interpret the instructional implications of the assessment results. The individual may be a member of the team described in paragraphs (2) to (6), inclusive.

(6) At the discretion of the parent, guardian, or the local educational agency, other individuals who have knowledge or special expertise regarding the pupil, including related services personnel, as appropriate. The determination of whether the individual has knowledge or special expertise regarding the pupil shall be made by the party who invites the individual to be a member of the individualized education program team.

(7) Whenever appropriate, the individual with exceptional needs.

(c) In accordance with Sections ~~300.540~~ 300.308 and ~~300.542~~ 300.310 of Title 34 of the Code of Federal Regulations, for a pupil suspected of having a specific learning disability, at least one member of the individualized education program team shall be qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. In accordance with Section ~~300.542~~ 300.310(a) of Title 34 of the Code of Federal Regulations, at least one team member other than the pupil's regular teacher shall observe the pupil's academic performance in the regular classroom setting. In the case of a child who is less than schoolage or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(d) (1) ~~In the case of transition services, the~~ The local educational agency shall invite an individual with exceptional needs to attend his or her individualized education program meeting if a purpose of the meeting will be the consideration of the *postsecondary goals for the individual and the needed transition services for the individual to assist the individual in reaching those goals under subparagraphs (A) and (B) of paragraph (8) of subdivision (a) of Section 56345.*

1 (2) If the individual with exceptional needs does not attend the
2 individualized education program meeting, the local educational
3 agency shall take steps to ensure that the individual's preferences
4 and interests are considered.

5 ~~(3) The local educational agency also shall invite to the~~
6 ~~individualized education program team meetings a representative~~
7 ~~that is likely to be responsible for providing or paying for transition~~
8 ~~services. If an agency invited to send a representative to a meeting~~
9 ~~does not do so, the local educational agency shall take other steps~~
10 ~~to obtain participation of the other agency in the planning of any~~
11 ~~transition services.~~

12 *(3) To the extent appropriate, with the consent of the parents*
13 *or an individual with exceptional needs who has reached the age*
14 *of majority, in implementing the requirements of paragraph (1),*
15 *the local educational agency shall invite a representative of a*
16 *participating agency that is likely to be responsible for providing*
17 *or paying for transition services.*

18 (e) A local educational agency may designate another local
19 educational agency member of the individualized education
20 program team to serve also as the representative required pursuant
21 to paragraph (4) of subdivision (b) if the requirements of
22 subparagraphs (A), (B), and (C) of paragraph (4) of subdivision
23 (b) are met.

24 (f) A member of the individualized education program team
25 *described in paragraphs (2) to (5), inclusive, of subdivision (b)*
26 *shall not be required to attend an individualized education program*
27 *meeting, in whole or in part, if the parent of the individual with*
28 *exceptional needs and the local educational agency agree, in*
29 *writing, that the attendance of the member is not necessary because*
30 *the member's area of the curriculum or related services is not being*
31 *modified or discussed in the meeting.*

32 (g) A member of the individualized education program team
33 *described in subdivision (f)* may be excused from attending an
34 individualized education program meeting, in whole or in part,
35 when the meeting involves a modification to or discussion of the
36 member's area of the curriculum or related services, if both of the
37 following occur:

38 (1) The parent, *in writing*, and the local educational agency
39 consent to the excusal after conferring with the member.

(2) The member submits in writing to the parent and the individualized education program team, input into the development of the individualized education program prior to the meeting.

(h) A parent's agreement under subdivision (f) and consent under subdivision (g) shall be in writing.

(i) In the case of a child who was previously served under Chapter 4.4 (commencing with Section 56425), Early Education for Individuals with Exceptional Needs, or the California Early Intervention Services Act under Title 14 (commencing with Section 95000) of the Government Code, an invitation to the initial individualized education program team meeting shall, at the request of the parent, be sent to the infants and toddlers with disabilities service coordinator, *as described in Subchapter III (commencing with Section 1431) of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.)*, or other representatives of the early education or early intervention system to assist with the smooth transition of services.

SEC. 18. Section 56341.5 of the Education Code is amended to read:

56341.5. (a) Each local educational agency convening a meeting of the individualized education program team shall take steps to ensure that no less than one of the parents or guardians of the individual with exceptional needs are present at each individualized education program meeting or are afforded the opportunity to participate.

(b) Parents or guardians shall be notified of the individualized education program meeting early enough to ensure an opportunity to attend.

(c) The individualized education program meeting shall be scheduled at a mutually agreed-upon time and place. The notice of the meeting under subdivision (b) shall indicate the purpose, time, and location of the meeting and who shall be in attendance. Parents or guardians shall also be informed in the notice of the right, pursuant to ~~clause (ii) of paragraph (1) of subsection (b) of Section 300.345~~ *Section 300.322(b)(1)(ii)* of Title 34 of the Code of Federal Regulations, to bring other people to the meeting who have knowledge or special expertise regarding the individual with exceptional needs, *and inform the parents of subdivision (i) of Section 56341 relating to the participation of the infants and toddlers with disabilities service coordinator under Subchapter*

1 *III (commencing with Section 1431) of the federal Individuals with*
2 *Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) at the*
3 *initial individualized education program team meeting for a child*
4 *previously served under the Subchapter III program.*

5 (d) As part of the participation of an individual with exceptional
6 needs in the development of an individualized education program,
7 as required by federal law, the individual with exceptional needs
8 shall be allowed to provide confidential input to any representative
9 of his or her individualized education program team.

10 (e) For an individual with exceptional needs, beginning no later
11 than the effective date of the individualized education program in
12 effect when the individual reaches the age of 16 years, or younger
13 if determined appropriate by the individualized education program
14 team, the meeting notice ~~shall~~ also *shall* indicate that a purpose of
15 the meeting will be the consideration of the postsecondary goals
16 and transition services for the individual, pursuant to Section
17 56345.1 and ~~subelause (VIII) of clause (i) of subparagraph (A) of~~
18 ~~paragraph (1) of subsection (d) of Section 1414~~ *Section*
19 *1414(d)(1)(A)(i)(VIII)* of Title 20 of the United States Code, and
20 the meeting notice shall indicate that the individual with
21 exceptional needs is invited to attend. If the pupil does not attend
22 the individualized education program meeting, the local educational
23 agency shall take steps to ensure that ~~the pupil's~~ preferences and
24 interests *of the pupil* are considered in accordance with ~~paragraph~~
25 ~~(2) of subsection (b) of Section 300.344~~ *Section 300.321(b)(2)* of
26 Title 34 of the Code of Federal Regulations.

27 (f) The meeting notice shall also identify any other local agency
28 in accordance with ~~paragraph (3) of subsection (b) of Section~~
29 ~~300.344~~ *Section 300.321(b)(3)* of Title 34 of the Code of Federal
30 Regulations.

31 (g) If no parent or guardian can attend the meeting, the local
32 educational agency shall use other methods to ensure parent or
33 guardian participation, including individual or conference telephone
34 calls, *consistent with Section 300.328 of Title 34 of the Code of*
35 *Federal Regulations related to alternative means of meeting*
36 *participation.*

37 (h) A meeting may be conducted without a parent or guardian
38 in attendance if the local educational agency is unable to convince
39 the parent or guardian that he or she should attend. In this event,

1 the local educational agency shall maintain a record of its attempts
2 to arrange a mutually agreed-upon time and place, as follows:

3 (1) Detailed records of telephone calls made or attempted and
4 the results of those calls.

5 (2) Copies of correspondence sent to the parents or guardians
6 and any responses received.

7 (3) Detailed records of visits made to the home or place of
8 employment of the parent or guardian and the results of those
9 visits.

10 (i) The local educational agency shall take any action necessary
11 to ensure that the parent or guardian understands the proceedings
12 at a meeting, including arranging for an interpreter for parents or
13 guardians with deafness or whose native language is a language
14 other than English.

15 (j) The local educational agency shall give the parent or guardian
16 a copy of the individualized education program, at no cost to the
17 parent or guardian.

18 SEC. 19. Section 56344 of the Education Code is amended to
19 read:

20 56344. (a) An individualized education program required as
21 a result of an assessment of a pupil shall be developed within a
22 total time not to exceed 60 days, not counting days between the
23 pupil's regular school sessions, terms, or days of school vacation
24 in excess of five schooldays, from the date of receipt of the parent's
25 written consent for assessment, unless the parent agrees, in writing,
26 to an extension. However, an individualized education program
27 required as a result of an assessment of a pupil shall be developed
28 within 30 days after the commencement of the subsequent regular
29 school year as determined by each ~~district's~~ *local educational*
30 *agency's* school calendar for each pupil for whom a referral has
31 been made 20 days or less prior to the end of the regular school
32 year. In the case of pupil school vacations, the 60-day time shall
33 recommence on the date that pupil schooldays reconvene. A
34 meeting to develop an initial individualized education program
35 for the pupil shall be conducted within 30 days of a determination
36 that the pupil needs special education and related services pursuant
37 to ~~paragraph (2) of subsection (b) of Section 300.343~~ *Section*
38 *300.323(b)(2)* of Title 34 of the Code of Federal Regulations.

39 (b) *Pursuant to Section 300.323(c)(2) of Title 34 of the Code*
40 *of Federal Regulations, as soon as possible following development*

1 *of the individualized education program, special education and*
2 *related services shall be made available to the individual with*
3 *exceptional needs in accordance with the individual's*
4 *individualized education program.*

5 ~~(b)~~

6 ~~(c) Each district, special education local plan area, or county~~
7 ~~office local educational agency shall have an individualized~~
8 ~~education program in effect for each individual with exceptional~~
9 ~~needs within its jurisdiction at the beginning of each school year~~
10 ~~in accordance with subdivision (a) and pursuant to subsections (a)~~
11 ~~and (b) of Section 300.342 Section 300.323(a) and (b) of Title 34~~
12 ~~of the Code of Federal Regulations.~~

13 SEC. 20. Section 56345 of the Education Code is amended to
14 read:

15 56345. (a) The individualized education program is a written
16 statement for each individual with exceptional needs that is
17 developed, reviewed, and revised in accordance with this section,
18 as required by ~~subsection (d) of Section 1414~~ *Section 1414(d)* of
19 Title 20 of the United States Code, and that includes the following:

20 (1) A statement of the individual's present levels of academic
21 achievement and functional performance, including the following:

22 (A) The manner in which the disability of the individual affects
23 his or her involvement and progress in the general education
24 curriculum.

25 (B) For preschool children, as appropriate, the manner in which
26 the disability affects his or her participation in appropriate
27 activities.

28 (C) For individuals with exceptional needs who take alternate
29 assessments aligned to alternate achievement standards, a
30 description of benchmarks or short-term objectives.

31 (2) A statement of measurable annual goals, including academic
32 and functional goals, designed to do the following:

33 (A) ~~Meet the individual's needs of the individual~~ that result
34 ~~from the individual's disability of the individual~~ to enable the pupil
35 to be involved in and make progress in the general *education*
36 curriculum.

37 (B) ~~Meet each of the pupil's other educational needs of the pupil~~
38 ~~that result from the individual's disability of the individual.~~

39 (3) A description of the manner in which the progress of the
40 pupil toward meeting the annual goals described in paragraph (2)

1 will be measured and when periodic reports on the progress the
2 pupil is making toward meeting the annual goals, such as through
3 the use of quarterly or other periodic reports, concurrent with the
4 issuance of report cards, will be provided.

5 (4) A statement of the special education and related services
6 and supplementary aids and services, based on peer-reviewed
7 research to the extent practicable, to be provided to the pupil, or
8 on behalf of the pupil, and a statement of the program modifications
9 or supports for school personnel that will be provided to *enable*
10 the pupil to do the following:

11 (A) To advance appropriately toward attaining the annual goals.

12 (B) To be involved in and make progress in the general
13 education curriculum in accordance with paragraph (1) and to
14 participate in extracurricular and other nonacademic activities.

15 (C) To be educated and participate with other individuals with
16 exceptional needs and nondisabled pupils in the activities described
17 in this subdivision.

18 (5) An explanation of the extent, if any, to which the pupil will
19 not participate with nondisabled pupils in the regular class and in
20 the activities described in subparagraph (C) of paragraph (4).

21 (6) (A) A statement of ~~any~~ individual appropriate
22 accommodations that are necessary to measure the academic
23 achievement and functional performance of the pupil on state and
24 districtwide assessments consistent with ~~subparagraph (A) of~~
25 ~~paragraph (16) of subsection (a) of Section 1412~~ *Section*
26 *1412(a)(16)(A)* of Title 20 of the United States Code.

27 (B) If the individualized education program team determines
28 that the pupil shall take an alternate assessment ~~on~~ *instead of* a
29 particular state or districtwide assessment of pupil achievement,
30 a statement of the following:

31 (i) The reason why the pupil cannot participate in the regular
32 assessment.

33 (ii) The reason why the particular alternate assessment selected
34 is appropriate for the pupil.

35 (7) The projected date for the beginning of the services and
36 modifications described in paragraph (4), and the anticipated
37 frequency, location, and duration of those services and
38 modifications.

39 (8) Beginning not later than the first individualized education
40 program to be in effect when the pupil is 16 years of age, *or*

1 *younger if determined appropriate by the individualized education*
2 *program team*, and updated annually thereafter, the following shall
3 be included:

4 (A) Appropriate measurable postsecondary goals based upon
5 age-appropriate transition assessments related to training,
6 education, employment, and where appropriate, independent living
7 skills.

8 (B) The transition services, as defined in Section 56345.1,
9 including courses of study, needed to assist the pupil in reaching
10 those goals.

11 (b) If appropriate, the individualized education program shall
12 also include, but not be limited to, all of the following:

13 (1) For pupils in grades 7 to 12, inclusive, any alternative means
14 and modes necessary for the pupil to complete the ~~district's~~
15 prescribed course of study *of the district* and to meet or exceed
16 proficiency standards for graduation.

17 (2) For individuals whose native language is other than English,
18 linguistically appropriate goals, objectives, programs, and services.

19 (3) Pursuant to Section ~~300.309~~ 300.106 of Title 34 of the Code
20 of Federal Regulations, extended school year services shall be
21 included in the individualized education program and provided to
22 the pupil if the ~~pupil's~~ individualized education program team *of*
23 *the pupil* determines, on an individual basis, that the services are
24 necessary for the provision of a free appropriate public education
25 to the pupil.

26 (4) Provision for the transition into the regular class program if
27 the pupil is to be transferred from a special class or nonpublic,
28 nonsectarian school into a regular class in a public school for any
29 part of the schoolday, including the following:

30 (A) A description of activities provided to integrate the pupil
31 into the regular education program. The description shall indicate
32 the nature of each activity, and the time spent on the activity each
33 day or week.

34 (B) A description of the activities provided to support the
35 transition of pupils from the special education program into the
36 regular education program.

37 (5) For pupils with low-incidence disabilities, specialized
38 services, materials, and equipment, consistent with guidelines
39 established pursuant to Section 56136.

(c) It is the intent of the Legislature in requiring individualized education programs, that the local educational agency is responsible for providing the services delineated in the individualized education program. However, the Legislature recognizes that some pupils may not meet or exceed the growth projected in the annual goals and objectives of the pupil's individualized education program *of the pupil*. Pursuant to paragraph (2) of subsection (a) of Section 300.350 of Title 34 of the Code of Federal Regulations, public education agencies shall make a good faith effort to assist each individual with exceptional needs to achieve the goals and objectives or benchmarks listed in the individualized education program of the pupil.

(d) Consistent with Section 56000.5 and ~~clause (iv) of subparagraph (B) of paragraph (3) of subsection (d) of Section 1414~~ Section 1414(d)(3)(B)(iv) of Title 20 of the United States Code, it is the intent of the Legislature that, in making a determination of the services that constitute an appropriate education to meet the unique needs of a deaf or hard-of-hearing pupil in the least restrictive environment, the individualized education program team shall consider the related services and program options that provide the pupil with an equal opportunity for communication access. The individualized education program team shall specifically discuss the communication needs of the pupil, consistent with "Deaf Students Education Services Policy Guidance" (57 Fed. Reg. 49274 (October 1992)), including all of the following:

(1) The pupil's primary language mode and language, which may include the use of spoken language with or without visual cues, or the use of sign language, or a combination of both.

(2) The availability of a sufficient number of age, cognitive, and language peers of similar abilities, which may be met by consolidating services into a local plan areawide program or providing placement pursuant to Section 56361.

(3) Appropriate, direct, and ongoing language access to special education teachers and other specialists who are proficient in the pupil's primary language mode and language consistent with existing law regarding teacher training requirements.

(4) Services necessary to ensure communication-accessible academic instructions, school services, and extracurricular activities consistent with the federal Vocational Rehabilitation Act of 1973

1 (29 U.S.C. Sec. 794 et seq.) and the federal Americans with
2 Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.).

3 (5) *In accordance with Section 300.113 of Title 34 of the Code*
4 *of Federal Regulations, each public agency shall ensure that*
5 *hearing aids worn in school by children with hearing impairments,*
6 *including deafness, are functioning properly.*

7 (6) *Subject to paragraph (7), each public agency, pursuant to*
8 *Section 300.113(b) of Title 34 of the Code of Federal Regulations,*
9 *shall ensure that external components of surgically implanted*
10 *medical devices are functioning properly.*

11 (7) *For a child with a surgically implanted medical device who*
12 *is receiving special education and a service under Section 56363,*
13 *a public agency is not responsible for the postsurgical*
14 *maintenance, programming, or replacement of the medical device*
15 *that has been surgically implanted, or of an external component*
16 *of the surgically implanted medical device.*

17 (e) State moneys appropriated to districts or local agencies may
18 not be used for any additional responsibilities and services
19 associated with paragraphs (1) and (2) of subdivision (d), including
20 the training of special education teachers and other specialists,
21 even if those additional responsibilities or services are required
22 pursuant to a judicial or state agency determination. Those
23 responsibilities and services shall only be funded by a local
24 educational agency as follows:

25 (1) The costs of those activities shall be funded from existing
26 programs and funding sources.

27 (2) Those activities shall be supported by the resources otherwise
28 made available to those programs.

29 (3) Those activities shall be consistent with Sections 56240 to
30 56243, inclusive.

31 (f) It is the intent of the Legislature that the communication
32 skills of teachers who work with hard-of-hearing and deaf children
33 be improved. This section does not remove the ~~local educational~~
34 ~~agency's~~ discretionary authority *of the local educational agency*
35 in regard to in-service activities.

36 (g) Beginning not later than one year before the pupil reaches
37 the age 18, a statement that the pupil has been informed of the
38 pupil's rights under this part, if any, that will transfer to the pupil
39 upon reaching the age of 18 pursuant to Section 56041.5.

(h) The individualized education program team is not required to include information under one component of a pupil's individualized education program that is already contained under another component of the individualized education program.

(i) This section does not require that additional information, beyond that ~~expressly~~ *explicitly* required by Section 1414 of Title 20 of the United States Code and this part, be included in the individualized education program of a pupil.

SEC. 21. Section 56345.1 of the Education Code is amended to read:

56345.1. (a) The term “transition services,” as defined in ~~paragraph (34) of Section 1401~~ *Section 1401(34)* of Title 20 of the United States Code and as used in subparagraph (B) of paragraph (8) of subdivision (a) of Section 56345, means a coordinated set of activities for an individual with exceptional needs that does all of the following:

(1) Is designed within an ~~outcome-oriented~~ *results-oriented* process, that ~~promotes~~ *is focused on improving the academic and functional achievement of the individual with exceptional needs to facilitate the movement of the pupil from school to postschool activities, including postsecondary education, vocational training education, integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation.*

(2) Is based upon the individual ~~pupil's~~ *needs of the pupil*, taking into account the ~~pupil's~~ *strengths, preferences, and interests of the pupil.*

(3) Includes instruction, related services, community experiences, the development of employment and other postschool adult living objectives, and, if appropriate, acquisition of daily living skills and *provision of a functional vocational evaluation.*

(b) *In accordance with Section 300.43(b) of Title 34 of the Code of Federal Regulations, transition services for individuals with exceptional needs may be special education, if provided as specially designed instruction, or a designated instruction and service, if required to assist a pupil to benefit from special education.*

~~(b)~~

(c) If a participating agency, other than the local educational agency, fails to provide the transition services described in the

pupil's individualized education program *of the pupil* in accordance with ~~paragraph (6) of subsection (d) of Section 1414~~ *Section 1414(d)(6)* of Title 20 of the United States Code and paragraph (8) of subdivision (a) of Section 56345, the local educational agency shall reconvene the individualized education program team to identify alternative strategies to meet the transition service needs for the pupil set out in the program.

SEC. 22. Section 56345.2 is added to the Education Code, to read:

56345.2. Pursuant to Section 300.117 of Title 34 of the Code of Federal Regulations, each public agency shall ensure that each individual with exceptional needs participates with nondisabled children in extracurricular activities to the maximum extent appropriate to the needs of that individual. Each public agency shall ensure that each individual with exceptional needs has the supplementary aids and services determined by the individualized education program team of the individual to be appropriate and necessary for the individual to participate in nonacademic settings.

SEC. 23. Section 56346 of the Education Code is amended to read:

56346. (a) A local educational agency that is responsible for making a free appropriate public education and related services to the child with a disability under this part shall seek to obtain informed consent from the parent of the child before providing special education and related services to the child pursuant to ~~subclause (II) of clause (i) of subparagraph (D) of paragraph (1) of subsection (a) of Section 1414~~ *Section 1414(a)(1)(D)(i)(II)* of Title 20 of the United States Code. *The local educational agency shall make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child in accordance with Section 300.300(b)(2) of Title 34 of the Code of Federal Regulations.*

(b) If the parent of the child refuses to consent to the initiation of services pursuant to subdivision (a), the local educational agency shall not provide special education and related services to the child by utilizing the procedures in Section 1415 of Title 20 of the United States Code or the procedures in subdivision (e) of Section 56506 *in order to obtain agreement or a ruling that the services may be provided to the child.*

1 (c) If the parent of the child refuses to consent to the receipt
2 *initial provision* of special education and related services, or the
3 parent fails to respond to a request to provide the consent, both of
4 the following are applicable:

5 (1) The local educational agency shall not be considered to be
6 in violation of the requirement to make available a free appropriate
7 public education to the child for the failure to provide the child
8 with the special education and related services for which the local
9 educational agency requests consent.

10 (2) The local educational agency shall not be required to convene
11 an individualized education program *team* meeting or develop an
12 individualized education program under this part for the child for
13 the special education and related services for which the local
14 educational agency requests consent.

15 (d) If the parent or guardian of a child who is an individual with
16 exceptional needs refuses all services in the individualized
17 education program after having consented to those services in the
18 past, the local educational agency shall file a request for due
19 process pursuant to Chapter 5 (commencing with Section 56500).

20 (e) If the parent of the child consents in writing to the receipt
21 of special education and related services for the child but does not
22 consent to all of the components of the individualized education
23 program, those components of the program to which the parent
24 has consented shall be implemented so as not to delay providing
25 instruction and services to the child.

26 (f) ~~If~~ *With the exception of a parent of a child who fails to*
27 *respond or refuses to consent to services pursuant to subdivision*
28 *(b), if* the local educational agency determines that the proposed
29 special education program component to which the parent does
30 not consent is necessary to provide a free appropriate public
31 education to the child, a due process hearing shall be initiated in
32 accordance with ~~subsection (f) of Section 1415~~ *Section 1415(f)* of
33 Title 20 of the United States Code. If a due process hearing is held,
34 the hearing decision shall be the final administrative determination
35 and shall be binding upon the parties. While a resolution session,
36 mediation conference, or due process hearing is pending, the child
37 shall remain in his or her current placement, unless the parent and
38 the local educational agency agree otherwise.

39 (g) *In accordance with Section 300.300(d)(4)(i) of Title 34 of*
40 *the Code of Federal Regulations, if a parent of a child who is home*

1 *schooled or placed in a private school by the parents at their own*
2 *expense does not provide consent for the initial assessment or the*
3 *reassessment, or the parent fails to respond to a request to provide*
4 *consent, the local educational agency may not use the consent*
5 *override procedures described in Section 300.300(a)(3) and (c)(1)*
6 *of Title 34 of the Code of Federal Regulations. The local*
7 *educational agency is not required to consider the child as eligible*
8 *for services under Article 5.6 (commencing with Section 56170)*
9 *of Chapter 2.*

10 SEC. 24. Section 56363 of the Education Code is amended to
11 read:

12 56363. (a) As used in this part, the term “designated instruction
13 and services” means “related services” as that term is defined in
14 ~~paragraph (26) of Section 1401~~ *Section 1401(26)* of Title 20 of
15 the United States Code and ~~Section 300.24~~ *300.34* of Title 34 of
16 the Code of Federal Regulations. The term “related services” means
17 transportation, and such developmental, corrective, and other
18 supportive services (including speech-language pathology and
19 audiology services, interpreting services, psychological services,
20 physical and occupational therapy, recreation, including therapeutic
21 recreation, social work services, school nurse services designed
22 to enable an individual with exceptional needs to receive a free
23 appropriate public education as described in the individualized
24 education program of the child, counseling services, including
25 rehabilitation counseling, orientation and mobility services, and
26 medical services, except that such medical services shall be for
27 diagnostic and evaluation purposes only) as may be required to
28 assist an individual with exceptional needs to benefit from special
29 education, and includes the early identification and assessment of
30 disabling conditions in children.

31 (b) These services may include, but are not limited to, the
32 following:

33 (1) Language and speech development and remediation. The
34 language and speech development and remediation services may
35 be provided by a speech-language pathology assistant as defined
36 in subdivision (f) of Section 2530.2 of the Business and Professions
37 Code.

38 (2) Audiological services.

39 (3) Orientation and mobility services.

40 (4) Instruction in the home or hospital.

- 1 (5) Adapted physical education.
- 2 (6) Physical and occupational therapy.
- 3 (7) Vision services.
- 4 (8) Specialized driver training instruction.
- 5 (9) Counseling and guidance services, including rehabilitation
- 6 counseling.
- 7 (10) Psychological services other than assessment and
- 8 development of the individualized education program.
- 9 (11) Parent counseling and training.
- 10 (12) Health and nursing services, including school nurse services
- 11 designed to enable an individual with exceptional needs to receive
- 12 a free appropriate public education as described in the
- 13 individualized education program.
- 14 (13) Social worker services.
- 15 (14) Specially designed vocational education and career
- 16 development.
- 17 (15) Recreation services.
- 18 (16) Specialized services for low-incidence disabilities, such as
- 19 readers, transcribers, and vision and hearing services.
- 20 (17) Interpreting services.

21 (c) The terms “designated instruction and services” and “related
22 services” do not include a medical device that is surgically
23 implanted, *including cochlear implants, the optimization of the*
24 *functioning of a medical device, maintenance of that device*, or the
25 replacement of that device, *pursuant to Section 300.34(b) of Title*
26 *34 of the Code of Federal Regulations. In accordance with Section*
27 *300.34(b) of Title 34 of the Code of Federal Regulations, nothing*
28 *in this subdivision shall do any of the following:*

29 (1) *Limit the right of an individual with exceptional needs with*
30 *a surgically implanted device, including a cochlear implant, to*
31 *receive related services or designated instruction and services that*
32 *are determined by the individualized education program team to*
33 *be necessary for the individual to receive a free appropriate public*
34 *education.*

35 (2) *Limit the responsibility of a local educational agency to*
36 *appropriately monitor and maintain medical devices that are*
37 *needed to maintain the health and safety of the individual,*
38 *including breathing, nutrition, or operation of other bodily*
39 *functions, while the individual is transported to and from school*
40 *or is at school.*

1 (3) *Prevent the routine checking of an external component of a*
2 *surgically implanted device to make sure it is functioning properly,*
3 *as required by Section 300.113(b) of Title 34 of the Code of*
4 *Federal Regulations.*

5 SEC. 25. Section 56380.1 of the Education Code is amended
6 to read:

7 56380.1. (a) In making changes to a pupil's individualized
8 education program after the annual individualized education
9 program meeting for a school year, the parent of the individual
10 with exceptional needs and the local educational agency may agree,
11 pursuant to ~~subparagraph (D) of paragraph (3) of subsection (d)~~
12 ~~of Section 1414~~ *Section 1414(d)(3)(D) of Title 20* of the United
13 States Code, not to convene an individualized education program
14 meeting for the purposes of making those changes, and instead
15 may develop a written document, signed by the parent and by a
16 representative of the local educational agency, to amend or modify
17 the pupil's existing individualized education program.

18 (b) Changes to the individualized education program may be
19 made, in accordance with ~~subparagraph (F) of paragraph (3) of~~
20 ~~subsection (d) of Section 1414~~ *Section 1414(d)(3)(F) of Title 20*
21 of the United States Code, either by the entire individualized
22 education program team *or*, as provided in subdivision (a), ~~or~~ by
23 amending the individualized education program rather than by
24 redrafting the entire individualized education program. Upon
25 request, a parent shall be provided with a revised copy of the
26 individualized education program with the amendments
27 incorporated.

28 (c) *If changes are made to the pupil's individualized education*
29 *program, in accordance with subdivisions (a) and (b), the local*
30 *educational agency shall ensure that the pupil's individualized*
31 *education program team is informed of those changes as required*
32 *by Section 300.324(a)(4)(ii) of Title 34 of the Code of Federal*
33 *Regulations.*

34 SEC. 26. Section 56381 of the Education Code is amended to
35 read:

36 56381. (a) (1) A reassessment of the pupil, based upon
37 procedures specified in Section 56302.1 and in Article 2
38 (commencing with Section 56320), and in accordance with
39 ~~subsections (a), (b), and (c) of Section 1414~~ *Section 1414(a), (b),*
40 *and (c) of Title 20 of the United States Code, shall be conducted*

1 if the local educational agency determines that the educational or
2 related services needs, including improved academic achievement
3 and functional performance, of the pupil warrant a reassessment,
4 or if the pupil's parents or teacher requests a reassessment.

5 (2) A reassessment shall occur not more frequently than once
6 a year, unless the parent and the local educational agency agree
7 otherwise, and shall occur at least once every three years, unless
8 the parent and the local educational agency agree, in writing, that
9 a reassessment is unnecessary.

10 If the reassessment so indicates, a new individualized education
11 program shall be developed.

12 (b) As part of ~~any~~ a reassessment, the individualized education
13 program team and other qualified professionals, as appropriate,
14 shall do the following:

15 (1) Review existing assessment data on the pupil, including
16 assessments and information provided by the parents of the pupil,
17 as specified in ~~clause (i) of paragraph (1) of subsection (a) of~~
18 ~~Section 300.533~~ *Section 300.305(a)(1)(i)* of Title 34 of the Code
19 of Federal Regulations, current classroom-based assessments and
20 observations, and teacher and related services providers'
21 observations.

22 (2) On the basis of the review conducted pursuant to paragraph
23 (1), and input from the ~~pupil's~~ *parents of the pupil*, identify what
24 additional data, if any, is needed to determine:

25 (A) Whether the pupil continues to have a disability described
26 in ~~paragraph (3) of Section 1401~~ *Section 1401(3)* of Title 20 of
27 the United States Code.

28 (B) The present levels of performance and educational needs
29 of the pupil.

30 (C) Whether the pupil continues to need special education and
31 related services.

32 (D) Whether any additions or modifications to the special
33 education and related services are needed to enable the pupil to
34 meet the measurable annual goals set out in the individualized
35 education program of the pupil and to participate, as appropriate,
36 in the general curriculum.

37 (c) The local educational agency shall administer tests and other
38 assessment materials needed to produce the data identified by the
39 individualized education program team.

(d) If the individualized education program team and other qualified professionals, as appropriate, determine that no additional data is needed to determine whether the pupil continues to be an individual with exceptional needs, and to determine the educational needs of the pupil, the local educational agency shall notify the pupil's parents *of the pupil* of that determination and the reasons for it, and the right of the parents to request an assessment to determine whether the pupil continues to be an individual with exceptional needs, and to determine the educational needs of the pupil. The local educational agency is not required to conduct an assessment, unless requested by the pupil's parents *of the pupil*.

(e) A local educational agency shall assess an individual with exceptional needs in accordance with this section and procedures specified in Article 2 (commencing with Section 56320), as provided in ~~paragraph (2) of subsection (c) of Section 300.534~~ *Section 300.306(c)(2) of Title 34 of the Code of Federal Regulations*.

(f) *(1) A reassessment may not be conducted, unless the written consent of the parent is obtained prior to reassessment, except pursuant to subdivision (e) of Section 56506. Pursuant to paragraphs (1) and (2) of subsection (c) of Section 300.505 Section 300.300(c)(1) and (2) of Title 34 of the Code of Federal Regulations, informed parental consent need not be obtained for the reassessment of an individual with exceptional needs if the local educational agency can demonstrate that it has taken reasonable measures to obtain that consent and the child's parent of the child has failed to respond. To*

(2) To meet the reasonable measure requirements of this subdivision, the local educational agency shall use procedures consistent with those set forth in subsection (d) of Section 300.345 Section 300.322(d) of Title 34 of the Code of Federal Regulations.

(3) If the parent refuses to consent to the reassessment, the local educational agency may, but is not required to, pursue the reassessment by using the consent override procedures described in Section 300.300(a)(3) of Title 34 of the Code of Federal Regulations.

(4) The local educational agency does not violate its obligations under Section 300.111 and Sections 300.301 to 300.311, inclusive, of Title 34 of the Code of Federal Regulations if it declines to pursue the reassessment.

(g) The individualized education program team and other qualified professionals referenced in subdivision (b) may conduct the review without a meeting, as provided in ~~subsection (b) of Section 300.533~~ *Section 300.305(b)* of Title 34 of the Code of Federal Regulations.

(h) Before determining that the individual is no longer an individual with exceptional needs, a local educational agency shall assess the individual in accordance with Section 56320 and this section, as appropriate, and in accordance with Section 1414 of Title 20 of the United States Code.

(i) (1) The assessment described in subdivision (h) shall not be required before the termination of a pupil's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under Section 56026.

(2) For a pupil whose eligibility under this part terminates under circumstances described in paragraph (1), a local educational agency shall provide the pupil with a summary of the ~~pupil's~~ academic achievement and functional performance *of the pupil*, which shall include recommendations on the manner in which to assist the pupil in meeting his or her postsecondary educational goals as required in ~~clause (ii) of subparagraph (B) of paragraph (5) of subsection (e) of Section 1414~~ *Section 1414(c)(5)(B)(ii)* of Title 20 of the United States Code.

(j) To the extent possible, the local educational agency shall encourage the consolidation of reassessment meetings for the *federal* individual with exceptional needs and other individualized education program team meetings for the individual.

SEC. 27. Section 56500.2 of the Education Code is amended to read:

56500.2. (a) ~~A(1) Notwithstanding any other provision of law, a complaint filed with the department regarding any alleged violations of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), or implementing regulations (Part 300 (commencing with Section 300.1) of Title 34 of the Code of Federal Regulations), or a provision of this part, shall be investigated in an expeditious and effective manner pursuant to Chapter 5.1 (commencing with Section 4600) of Title 5 of the California Code of Regulations and Sections 300.660 to 300.662, inclusive, of Title 34 of the Code of Federal Regulations in~~

1 *accordance with Sections 300.151 to 300.153, inclusive, of Title*
2 *34 of the Code of Federal Regulations. A written decision shall*
3 *be issued to the complainant in accordance with the 60-day time*
4 *limit specified in Section 300.152 of Title 34 of the Code of Federal*
5 *Regulations.*

6 *(2) The party filing the complaint shall forward a copy of the*
7 *complaint to the local educational agency or public agency serving*
8 *the child at the same time the party files the complaint with the*
9 *department, in accordance with Section 300.153(d) of Title 34 of*
10 *the Code of Federal Regulations.*

11 *(b) Pursuant to ~~subsection (c) of Section 300.662~~ Section*
12 *300.153(c) of Title 34 of the Code of Federal Regulations, a*
13 *complaint filed under subdivision (a) shall allege a violation that*
14 *occurred not more than one year prior to the date that the complaint*
15 *is received by the department.*

16 *(c) The complaint shall include all of the following:*

17 *(1) A statement that a local educational agency or public agency*
18 *has violated a requirement of this part or Part B of the federal*
19 *Individuals with Disabilities Education Act (Title 20 (commencing*
20 *with Section 1400) of the United States Code), or Part 300*
21 *(commencing with Section 300.1) of Title 34 of the Code of Federal*
22 *Regulations.*

23 *(2) The facts on which the statement is based.*

24 *(3) The signature and contact information for the complainant.*

25 *(4) If alleging violations with respect to a specific child, all of*
26 *the following:*

27 *(A) The name and address of residence of the child.*

28 *(B) The name of the school the child is attending.*

29 *(C) In the case of a homeless child or youth within the meaning*
30 *of paragraph (2) of Section 725 of the federal McKinney-Vento*
31 *Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)), available*
32 *contact information for the child, and the name of the school the*
33 *child is attending.*

34 *(D) A description of the nature of the problem of the child,*
35 *including facts relating to the problems.*

36 *(E) A proposed resolution of the problem to the extent known*
37 *and available to the party at the time the complaint is filed.*

38 *(d) The Superintendent shall develop a model form, pursuant*
39 *to Section 300.509 of Title 34 of the Code of Federal Regulations,*

1 *to assist parents and public agencies in filing a state complaint*
2 *under this section.*

3 SEC. 28. Section 56500.3 of the Education Code is amended
4 to read:

5 56500.3. (a) It is the intent of the Legislature that parties to
6 special education disputes be encouraged to seek resolution through
7 mediation prior to filing a request for a due process hearing. It is
8 also the intent of the Legislature that these voluntary prehearing
9 request mediation conferences be an informal process conducted
10 in a nonadversarial atmosphere to resolve issues relating to the
11 identification, assessment, or educational placement of the child,
12 or the provision of a free appropriate public education to the child,
13 to the satisfaction of both parties. Therefore, attorneys or other
14 independent contractors used to provide legal advocacy services
15 may not attend or otherwise participate in the prehearing request
16 mediation conferences.

17 (b) This part does not preclude the parent or the public education
18 agency from being accompanied and advised by nonattorney
19 representatives in the mediation conferences and consulting with
20 an attorney prior to or following a mediation conference. For
21 purposes of this section, “attorney” means an active, practicing
22 member of the State Bar of California or another independent
23 contractor used to provide legal advocacy services, but does not
24 mean a parent of the pupil who is also an attorney.

25 (c) Requesting or participating in a mediation conference is not
26 a prerequisite to requesting a due process hearing.

27 (d) All requests for a mediation conference shall be filed with
28 the Superintendent. The party initiating a mediation conference
29 by filing a written request with the Superintendent shall provide
30 the other party to the mediation with a copy of the request at the
31 same time the request is filed with the Superintendent. The
32 mediation conference shall be conducted by a person
33 knowledgeable in the process of reconciling differences in a
34 nonadversarial manner and under contract with the department
35 pursuant to Section 56504.5. The mediator shall be knowledgeable
36 in the laws and regulations governing special education.

37 (e) The prehearing mediation conference shall be scheduled
38 within 15 days of receipt by the Superintendent of the request for
39 mediation. The mediation conference shall be completed within
40 30 days after receipt of the request for mediation unless both parties

1 to the prehearing mediation conference agree to extend the time
2 for completing the mediation. Pursuant to ~~paragraph (3) of~~
3 ~~subsection (b) of Section 300.506~~ *Section 300.506(b)(4)* of Title
4 34 of the Code of Federal Regulations, and to encourage the use
5 of mediation, the state shall bear the cost of the mediation process,
6 including any meetings described in ~~subsection (d) of Section~~
7 ~~300.506~~ *Section 300.506(b)(2)* of Title 34 of the Code of Federal
8 Regulations. The costs of mediation shall be included in the
9 contract described in Section 56504.5.

10 (f) In accordance with ~~subparagraph (F) of paragraph (2) of~~
11 ~~subsection (e) of Section 1415~~ *Section 1415(e)(2)(F)* of Title 20
12 of the United States Code, if a resolution is reached that resolves
13 the due process issue through the mediation process, the parties
14 shall execute a legally binding written agreement that sets forth
15 the resolution and that does the following:

16 (1) States that all discussions that occurred during the mediation
17 process shall be confidential and may not be used as evidence in
18 any subsequent due process hearing or civil proceeding.

19 (2) Is signed by both the parent and the representative of the
20 public ~~education~~ agency who has the authority to bind the agency.

21 (3) Is enforceable in any state court of competent jurisdiction
22 or in a federal district court of the United States.

23 (g) If the mediation conference fails to resolve the issues to the
24 satisfaction of all parties, the party who requested the mediation
25 conference has the option of filing for a state-level hearing pursuant
26 to Section 56505. The mediator may assist the parties in specifying
27 any unresolved issues to be included in the hearing request.

28 (h) Any mediation conference held pursuant to this section shall
29 be scheduled in a timely manner and shall be held at a time and
30 place reasonably convenient to the parties to the dispute in
31 accordance with ~~paragraph (4) of subsection (b) of Section 300.506~~
32 *Section 300.506(b)(5)* of Title 34 of the Code of Federal
33 Regulations.

34 (i) The mediation conference shall be conducted in accordance
35 with regulations adopted by the board.

36 (j) *(I)* Notwithstanding any procedure set forth in this chapter,
37 a public ~~education~~ agency and a parent ~~may~~, if the party initiating
38 the mediation conference so chooses, *may* meet informally to
39 resolve any issue or issues to the satisfaction of both parties prior
40 to the mediation conference.

(2) *In accordance with Section 300.506(b)(2) of Title 34 of the Code of Federal Regulations, a public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party as follows:*

(A) *Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the state established under Section 1471 or Section 1472 of Title 20 of the United States Code.*

(B) *Who would explain the benefits of, and encourage the use of, the mediation process to the parents.*

(k) *The procedures and rights contained in this section shall be included in the notice of parent rights attached to the pupil's assessment plan of the pupil pursuant to Section 56321.*

SEC. 29. *Section 56500.4 of the Education Code is amended to read:*

56500.4. (a) ~~Pursuant to paragraphs (3) and (4) of subsection (b) and paragraph (1) of subsection (c) of Section 1415~~ *Section 1415(b)(3) and (4) and (c)(1) of Title 20 of the United States Code, and in accordance with Section 300.503 of Title 34 of the Code of Federal Regulations, prior written notice shall be given by the public education agency to the parents or guardians of an individual with exceptional needs, or to the parents or guardians of a child upon initial referral for assessment, and when a reasonable time before the public education agency proposes to initiate or change, or refuses to initiate or change, the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education to the child. In accordance with Section 300.304 of Title 34 of the Code of Federal Regulations, the public agency shall include in the prior written notice, a description of any assessment procedures the agency proposes to conduct.*

(b) *The notice required under subdivision (a) shall, in accordance with Section 300.503(b) of Title 34 of the Code of Federal Regulations, include all of the following:*

(1) *A description of the action proposed or refused by the public agency.*

1 (2) *An explanation of why the public agency proposes or refuses*
2 *to take the action.*

3 (3) *A description of each assessment procedure, assessment,*
4 *record, or report the public agency used as a basis for the proposed*
5 *or refused action.*

6 (4) *A statement that the parents of an individual with exceptional*
7 *needs have under the procedural safeguards of this part and, if*
8 *this notice is not an initial referral for assessment, the means by*
9 *which a copy of a description of the procedural safeguards can*
10 *be obtained.*

11 (5) *Sources for parents to contact to obtain assistance in*
12 *understanding the provisions of this part.*

13 (6) *A description of other options that the individualized*
14 *education program team considered and the reasons why those*
15 *options were rejected.*

16 (7) *A description of other factors that are relevant to the*
17 *proposal or refusal of the agency.*

18 SEC. 30. Section 56501.5 of the Education Code is amended
19 to read:

20 56501.5. (a) Notwithstanding any other provision of law, prior
21 ~~to a party invoking his or her right to the opportunity for an~~
22 ~~impartial due process hearing under this chapter, the local~~
23 ~~educational agency shall convene a resolution session, which is a~~
24 ~~meeting between~~ *with the parents and the relevant member or*
25 *members of the individualized education program team who have*
26 *specific knowledge of the facts identified in the due process hearing*
27 *request, in accordance with subparagraph (B) of paragraph (1) of*
28 ~~subsection (f) of Section 1415~~ *Section 1415(f)(1)(B) of Title 20*
29 *of the United States Code and Section 300.510 of Title 34 of the*
30 *Code of Federal Regulations. The parent and the local educational*
31 *agency shall determine the relevant members of the individualized*
32 *education program team to attend the meeting.*

33 (1) The meeting shall be convened within 15 days of receiving
34 notice of the ~~parents'~~² due process hearing request *of the parent.*

35 (2) The meeting shall include a representative of the local
36 educational agency who has decisionmaking authority on behalf
37 of the agency.

38 (3) The meeting shall not include an attorney of the local
39 educational agency, unless the parent is accompanied by an
40 attorney.

1 (4) ~~At the meeting, the parents of the child may discuss their~~
2 *The purpose of the meeting is for the parent of the child to discuss*
3 *the due process hearing issue, and the facts that form the basis of*
4 *the due process hearing request, and so that the local educational*
5 *agency shall be provided has the opportunity to resolve the matter*
6 *dispute that is the basis for the due process hearing request.*

7 (b) The resolution session described in subdivision (a) ~~is not~~
8 ~~required~~ *need not be held* if the parents and the local educational
9 agency agree in writing to waive the meeting, or agree to use *the*
10 *mediation process* as provided for in this chapter.

11 (c) If the local educational agency has not resolved the due
12 process hearing issue to the satisfaction of the parents within 30
13 days of the receipt of the due process hearing request notice, the
14 due process hearing may occur, ~~and all of the applicable timelines~~
15 ~~for a due process hearing under this chapter shall commence.~~
16 *Except as provided in subdivision (d), the timeline for issuing a*
17 *final decision under paragraph (3) of subdivision (f) of Section*
18 *56505 begins at the expiration of this 30-day period.*

19 (d) *The 45-day timeline for the due process hearing cited in*
20 *paragraph (3) of subdivision (f) of Section 56505 starts the day*
21 *after one of the following events:*

22 (1) *Both parties agree in writing to waive the resolution meeting.*

23 (2) *After either the mediation or resolution meeting starts but*
24 *before the end of the 30-day resolution period, the parties agree*
25 *in writing that no agreement is possible.*

26 (3) *If both parties agree in writing to continue the mediation at*
27 *the end of the 30-day resolution period, but later, the parent or*
28 *local educational agency withdraws from the mediation process.*

29 (e) *Except where the parties have jointly agreed to waive the*
30 *resolution process or to use mediation, notwithstanding subdivision*
31 *(c), the failure of the parent filing a due process hearing request*
32 *to participate in the resolution meeting will delay the timelines for*
33 *the resolution process and due process hearing until the meeting*
34 *is held.*

35 (1) *If the local educational agency is unable to obtain the*
36 *participation of the parent in the resolution meeting after*
37 *reasonable efforts have been made and documented by detailed*
38 *records of telephone calls made or attempted and the results of*
39 *those calls, copies of correspondence sent to the parent and any*
40 *responses received, and detailed records of visits made to the home*

1 *or place of employment of the parent, the local educational agency*
2 *may, at the conclusion of the 30-day period, request that a hearing*
3 *officer dismiss the due process hearing request of the parent.*

4 *(2) If the local educational agency fails to hold the resolution*
5 *meeting specified in subdivision (a) within 15 days of receiving*
6 *notice of a due process hearing request of a parent or fails to*
7 *participate in the resolution meeting, the parent may seek the*
8 *intervention of a hearing officer to begin the due process hearing*
9 *timeline.*

10 ~~(d)~~

11 *(f) In the case that a resolution is reached to resolve the due*
12 *process hearing issue at a meeting described in subdivision (a),*
13 *the parties shall execute a legally binding agreement that is both*
14 *of the following:*

15 *(1) Signed by both the parent and a representative of the local*
16 *educational agency who has the authority to bind the agency.*

17 *(2) Enforceable in any a state court of competent jurisdiction*
18 *or in a federal district court of the United States.*

19 ~~(e)~~

20 *(g) If the parties execute an agreement pursuant to subdivision*
21 *(d), a party may void the agreement within three business days of*
22 *the agreement's execution of the agreement.*

23 SEC. 31. Section 56502 of the Education Code is amended to
24 read:

25 56502. (a) All requests for a due process hearing shall be filed
26 with the Superintendent in accordance with ~~paragraphs (1) and (2)~~
27 ~~of subsection (c) of Section 300.507~~ *Section 300.508(a) and (b)*
28 *of Title 34 of the Code of Federal Regulations.*

29 (b) The Superintendent shall develop a model form to assist
30 parents and guardians in filing a request for due process that is in
31 accordance with ~~paragraph (3) of subsection (c) of Section 300.507~~
32 *300.509 of Title 34 of the Code of Federal Regulations.*

33 (c) (1) The party, or the attorney representing the party,
34 initiating a due process hearing by filing a written request with the
35 Superintendent shall provide the other party to the hearing with a
36 copy of the request at the same time as the request is filed with the
37 Superintendent. The due process hearing request notice shall
38 remain confidential. In accordance with ~~subparagraph (A) of~~
39 ~~paragraph (7) of subsection (b) of Section 1415~~ *Section*

1 *1415(b)(7)(A)* of Title 20 of the United States Code, the request
2 shall include the following:

3 (A) The name of the child, the address of the residence of the
4 child, or available contact information in the case of a homeless
5 child, and the name of the school the child is attending.

6 (B) In the case of a homeless child or youth within the meaning
7 of paragraph (2) of Section 725 of the federal McKinney-Vento
8 Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)), available
9 contact information for the child and the name of the school the
10 child is attending.

11 (C) A description of the nature of the problem of the child
12 relating to the proposed initiation or change, including facts relating
13 to the problem.

14 (D) A proposed resolution of the problem to the extent known
15 and available to the party at the time.

16 (2) A party may not have a due process hearing until the party,
17 or the attorney representing the party, files a request that meets
18 the requirements listed in this subdivision.

19 (d) (1) The due process hearing request notice required by
20 ~~subparagraph (A) of paragraph (7) of subsection (b) of Section~~
21 ~~1415~~ *Section 1415(b)(7)(A)* of Title 20 of the United States Code
22 shall be deemed to be sufficient unless the party receiving the
23 notice notifies the due process hearing officer and the other party
24 in writing that the receiving party believes the due process hearing
25 request notice has not met the notice requirements. The party
26 providing a hearing officer notification shall provide the
27 notification within 15 days of receiving the due process hearing
28 request notice. Within five days of receipt of the notification, the
29 hearing officer shall make a determination on the face of the notice
30 of whether the notification meets the requirements of ~~subparagraph~~
31 ~~(A) of paragraph (7) of subsection (b) of Section 1415~~ *Section*
32 *1415(b)(7)(A)* of Title 20 of the United States Code, and shall
33 immediately notify the parties in writing of the determination.

34 (2) (A) The response to the due process hearing request notice
35 shall be made within 10 days of receiving the request notice in
36 accordance with ~~subparagraph (B) of paragraph (2) of subsection~~
37 ~~(c) of Section 1415~~ *Section 1415(c)(2)(B)* of Title 20 of the United
38 States Code.

39 (B) *In accordance with Section 300.508(e)(1) of Title 34 of the*
40 *Code of Federal Regulations, if the local educational agency has*

1 *not sent a prior written notice under Section 56500.4 and Section*
2 *300.503 of Title 34 of the Code of Federal Regulations to the*
3 *parent regarding the subject matter contained in the due process*
4 *hearing request of the parent, the response from the local*
5 *educational agency to the parent shall include all of the following:*

6 *(i) An explanation of why the agency proposed or refused to*
7 *take the action raised in the due process hearing request.*

8 *(ii) A description of other options that the individualized*
9 *education program team considered and the reasons why those*
10 *options were rejected.*

11 *(iii) A description of each assessment procedure, assessment,*
12 *record, or report the agency used as the basis for the proposed or*
13 *refused action.*

14 *(iv) A description of other factors that are relevant to the*
15 *proposed or refused action of the agency.*

16 *(C) A response by a local educational agency under*
17 *subparagraph (B) shall not be construed to preclude the local*
18 *educational agency from asserting that the due process request of*
19 *the parent was insufficient, where appropriate.*

20 *(D) Except as provided under subparagraph (B), the party*
21 *receiving a due process hearing request notice, within 10 days of*
22 *receiving the notice, shall send to the other party, in accordance*
23 *with Section 300.508(f) of Title 34 of the Code of Federal*
24 *Regulations, a response that specifically addresses the issues raised*
25 *in the due process hearing request notice.*

26 *(e) A party may amend a due process hearing request notice*
27 *only if the other party consents in writing to the amendment and*
28 *is given the opportunity to resolve the hearing issue through a*
29 *meeting held pursuant to ~~subparagraph (B) of paragraph (1) of~~*
30 *~~subsection (f) of Section 1415~~ Section 1415(f)(1)(B) of Title 20*
31 *of the United States Code, or the due process hearing officer grants*
32 *permission, except that the hearing officer may only grant*
33 *permission at any time not later than five days before a due process*
34 *hearing occurs. The applicable timeline for a due process hearing*
35 *under this chapter shall recommence at the time the party files an*
36 *amended notice, including the timeline under ~~subparagraph (B) of~~*
37 *~~paragraph (1) of subsection (f) of Section 1415~~ Section*
38 *1415(f)(1)(B) of Title 20 of the United States Code.*

39 *(f) The Superintendent shall take steps to ensure that within 45*
40 *days after receipt of the written hearing request the hearing is*

1 immediately commenced and completed, including, any mediation
2 requested at any point during the hearing process pursuant to
3 paragraph (2) of subdivision (b) of Section 56501, and a final
4 administrative decision is rendered, unless a continuance has been
5 granted pursuant to Section 56505.

6 (g) Notwithstanding any procedure set forth in this chapter, a
7 public-~~education~~ agency and a parent or guardian ~~may~~, if the party
8 initiating the hearing so chooses, *may* meet informally to resolve
9 ~~any~~ *an* issue or issues relating to the identification, assessment, or
10 education and placement of the child, or the provision of a free
11 appropriate public education to the child, to the satisfaction of both
12 parties prior to the hearing. The informal meeting shall be
13 conducted by the district superintendent, county superintendent,
14 or director of the public-~~education~~ agency or his or her designee.
15 ~~Any~~ A designee appointed pursuant to this subdivision shall have
16 the authority to resolve the issue or issues.

17 (h) Upon receipt by the Superintendent of a written request by
18 the parent or guardian or public-~~education~~ agency, the
19 Superintendent or his or her designee or designees ~~shall~~
20 immediately *shall* notify, in writing, all parties of the request for
21 the hearing and the scheduled date for the hearing. The notice shall
22 advise all parties of all their rights relating to procedural
23 safeguards. The Superintendent or his or her designee shall provide
24 both parties with a list of persons and organizations within the
25 geographical area that can provide free or reduced cost
26 representation or other assistance in preparing for the due process
27 hearing. This list shall include a brief description of the requirement
28 to qualify for the services. The Superintendent or his or her
29 designee shall have complete discretion in determining which
30 individuals or groups shall be included on the list.

31 (i) In accordance with ~~subparagraph (B) of paragraph (3) of~~
32 ~~subsection (f) of Section 1415~~ *Section 1415(f)(3)(B)* of Title 20
33 of the United States Code, the party requesting the due process
34 hearing shall not be allowed to raise issues at the due process
35 hearing that were not raised in the notice filed under this section,
36 unless the other party agrees otherwise.

37 SEC. 32. Section 56505 of the Education Code is amended to
38 read:

39 56505. (a) The state hearing shall be conducted in accordance
40 with regulations adopted by the board.

1 (b) The hearing shall be held at a time and place reasonably
2 convenient to the parent or guardian and the pupil.

3 (c) (1) The hearing shall be conducted by a person who ~~shall~~,
4 at a minimum, *shall* possess knowledge of, and the ability to
5 understand, the provisions of this part and related state statutes
6 and implementing regulations, the federal Individuals with
7 Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), federal
8 regulations pertaining to the act, and legal interpretations of this
9 part and the federal law by federal and state courts, and who has
10 satisfactorily completed training pursuant to this subdivision. The
11 Superintendent shall establish standards for the training of hearing
12 officers, the degree of specialization of the hearing officers, and
13 the quality control mechanisms to be used to ensure that the
14 hearings are fair and the decisions are accurate.

15 (2) The hearing officer shall possess the knowledge and ability
16 to conduct hearings in accordance with appropriate, standard legal
17 practice.

18 (3) The hearing officer shall possess the knowledge and ability
19 to render and write decisions in accordance with appropriate,
20 standard legal practice.

21 (4) A due process hearing may not be conducted by ~~any an~~
22 individual listed in ~~clause (i) of subparagraph (A) of paragraph (3)~~
23 ~~of subsection (f) of Section 1415~~ *Section 1415(f)(3)(A)(i)* of Title
24 20 of the United States Code. Pursuant to ~~subsection (b) of Section~~
25 ~~300.508~~ *Section 300.511(c)(2)* of Title 34 of the Code of Federal
26 Regulations, a person who is qualified to conduct a hearing is not
27 an employee of the agency solely because he or she is paid by the
28 agency to serve as a hearing officer. The hearing officer shall
29 encourage the parties to a hearing to consider the option of
30 mediation as an alternative to a hearing.

31 (d) Pursuant to ~~subsection (a) of Section 300.514~~ *Section*
32 *300.518(a)* of Title 34 of the Code of Federal Regulations, during
33 the pendency of the hearing proceedings, including the actual
34 state-level hearing, or judicial proceeding regarding a due process
35 hearing, the pupil shall remain in his or her present placement,
36 except as provided in ~~Section 300.526~~ *300.533* of Title 34 of the
37 Code of Federal Regulations, unless the public ~~education~~ agency
38 and the parent or guardian agree otherwise. A pupil applying for
39 initial admission to a public school ~~shall~~, with the consent of his
40 or her parent or guardian, *shall* be placed in the public school

1 program until all proceedings have been completed. As provided
2 in ~~subsection (c) of Section 300.514~~ *Section 300.518(d)* of Title
3 34 of the Code of Federal Regulations, if the decision of a hearing
4 officer in a due process hearing or a state review official in an
5 administrative appeal agrees with the parent or guardian of the
6 pupil that a change of placement is appropriate, that placement
7 shall be treated as an agreement between the state or local agency
8 and the parent or guardian. *In accordance with Section 300.518(c)*
9 *of Title 34 of the Code of Federal Regulations, if a due process*
10 *hearing request involves an application for initial services from*
11 *a child who is transitioning from an early education program*
12 *serving individuals with exceptional needs between the ages of*
13 *three to five years, inclusive, under Chapter 4.45 (commencing*
14 *with Section 56440), and is no longer eligible for early education*
15 *services because the child has turned three years of age, the local*
16 *educational agency is not required to provide early education*
17 *services that the child had been receiving. If the child is found*
18 *eligible for special education and related services for children age*
19 *three years of age and older, and the parent consents to the initial*
20 *provision of special education and related services under Section*
21 *300.300(b) of Title 34 of the Code of Federal Regulations, then*
22 *the local educational agency shall provide those special education*
23 *and related services that are not in dispute between the parent and*
24 *the local educational agency.*

25 (e) ~~Any~~ A party to the hearing held pursuant to this section shall
26 be afforded the following rights consistent with state and federal
27 statutes and regulations:

28 (1) The right to be accompanied and advised by counsel and by
29 individuals with special knowledge or training relating to the
30 problems of individuals with exceptional needs.

31 (2) The right to present evidence, written arguments, and oral
32 arguments.

33 (3) The right to confront, cross-examine, and compel the
34 attendance of, witnesses.

35 (4) The right to a written, or, at the option of the parents or
36 guardians, electronic verbatim record of the hearing.

37 (5) The right to written, or, at the option of the parent or
38 guardian, electronic findings of fact and decisions. The record of
39 the hearing and the findings of fact and decisions shall be provided
40 at no cost to parents or guardians in accordance with ~~paragraph~~

~~(2) of subsection (c) of Section 300.509~~ *Section 300.512(c)(3)* of Title 34 of the Code of Federal Regulations. The findings and decisions shall be made available to the public after any personally identifiable information has been deleted consistent with the confidentiality requirements of ~~subsection (c) of Section 1417~~ *Section 1417(c)* of Title 20 of the United States Code and shall also be transmitted to the Advisory Commission on Special Education pursuant to ~~paragraph (4) of subsection (h) of Section 1415~~ *Section 1415(h)(4)* of Title 20 of the United States Code.

(6) The right to be informed by the other parties to the hearing, at least 10 days prior to the hearing, as to what those parties believe are the issues to be decided at the hearing and their proposed resolution of those issues. Upon the request of a parent who is not represented by an attorney, the agency responsible for conducting hearings shall provide a mediator to assist the parent in identifying the issues and the proposed resolution of the issues.

(7) The right to receive from other parties to the hearing, at least five business days prior to the hearing, a copy of all documents and a list of all witnesses and their general area of testimony that the parties intend to present at the hearing. Included in the material to be disclosed to all parties at least five business days prior to a hearing shall be all assessments completed by that date and recommendations based on the assessments that the parties intend to use at the hearing.

(8) The right, pursuant to ~~paragraph (3) of subsection (a) of Section 300.509~~ *Section 300.512(a)(3)* of Title 34 of the Code of Federal Regulations, to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

(f) (1) In accordance with ~~subparagraph (E) of paragraph (3) of subsection (f) of Section 1415~~ *Section 1415(f)(3)(E)* of Title 20 of the United States Code, the decision of a due process hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

(2) In matters alleging a procedural violation, a due process hearing officer may find that a child did not receive a free appropriate public education only if the procedural violation did any of the following:

1 (A) Impeded the ~~child's~~ *right of the child* to a free appropriate
2 public education.

3 (B) Significantly impeded the ~~parents'~~ *opportunity of the parents*
4 to participate in the decisionmaking process regarding the provision
5 of a free appropriate public education to the ~~parents'~~ *child of the*
6 *parents*.

7 (C) Caused a deprivation of educational benefits.

8 (3) The hearing conducted pursuant to this section shall be
9 completed and a written, reasoned decision, including the reasons
10 for ~~any~~ *a* nonpublic, nonsectarian school placement, the provision
11 of nonpublic, nonsectarian agency services, or the reimbursement
12 for the placement or services, taking into account the requirements
13 of subdivision (a) of Section 56365, shall be mailed to all parties
14 to the hearing ~~within not later than 45 days from the receipt by~~
15 ~~the Superintendent of the request for a hearing after the expiration~~
16 ~~of the 30-day period pursuant to subdivision (c) of Section 56501.5.~~
17 Either party to the hearing may request the hearing officer to grant
18 an extension. The extension shall be granted upon a showing of
19 good cause. ~~Any~~ *An* extension shall extend the time for rendering
20 a final administrative decision for a period only equal to the length
21 of the extension.

22 (4) This subdivision does not preclude a due process hearing
23 officer from ordering a local educational agency to comply with
24 procedural requirements under this chapter.

25 (g) Subdivision (f) does not alter the burden of proof required
26 in a due process hearing, or prevent a hearing officer from ordering
27 a compensatory remedy for an individual with exceptional needs.

28 (h) The hearing conducted pursuant to this section shall be the
29 final administrative determination and binding on all parties.

30 (i) In decisions relating to the placement of individuals with
31 exceptional needs, the person conducting the state hearing shall
32 consider cost, in addition to all other factors that are considered.

33 (j) In a hearing conducted pursuant to this section, the hearing
34 officer ~~may~~ *shall* not base a decision solely on nonsubstantive
35 procedural errors, unless the hearing officer finds that the
36 nonsubstantive procedural errors resulted in the loss of an
37 educational opportunity to the pupil or interfered with the
38 opportunity of the parent or guardian of the pupil to participate in
39 the formulation process of the individualized education program.

(k) This chapter does not preclude a party aggrieved by the findings and decisions in a hearing under this section from exercising the right to appeal the decision to a state court of competent jurisdiction. An aggrieved party may also exercise the right to bring a civil action in a district court of the United States without regard to the amount in controversy, pursuant to Section ~~300.512~~ 300.516 of Title 34 of the Code of Federal Regulations. An appeal shall be made within 90 days of receipt of the hearing decision. During the pendency of ~~any~~ *an* administrative or judicial proceeding conducted pursuant to Chapter 5 (commencing with Section 56500), the child involved in the hearing shall remain in his or her present educational placement, unless the public education agency and the parent or guardian of the child agree otherwise. ~~Any~~ *An* action brought under this subdivision shall adhere to the provisions of subsection (b) of Section ~~300.512~~ Section 300.516(c) of Title 34 of the Code of Federal Regulations.

(l) ~~Any~~ *A* request for a due process hearing arising under subdivision (a) of Section 56501 shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. In accordance with ~~subparagraph (D) of paragraph (3) of subsection (f) of Section 1415~~ Section 1415(f)(3)(D) of Title 20 of the United States Code, the time period specified in this subdivision does not apply to a parent if the parent was prevented from requesting the due process hearing due to either of the following:

(1) Specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request.

(2) The ~~local educational agency's~~ withholding of information *by the local educational agency* from the parent that was required under this part to be provided to the parent.

(m) Pursuant to ~~subsection (e) of Section 300.508~~ Section 300.511(c) of Title 34 of the Code of Federal Regulations, each public education agency shall keep a list of the persons who serve as due process hearing officers, in accordance with Section 56504.5, and the list shall include a statement of the qualifications of each of those persons. The list of hearing officers shall be provided to the public education agencies by the organization or entity under contract with the department to conduct due process hearings.

(n) A party who filed for a due process hearing prior to the effective date of this section is not bound by the two-year statute of limitations time period in subdivision (l) if the party filed a request within the three-year statute of limitations provision pursuant to subdivision (l) as it read prior to October 9, 2006.

(o) This section shall become operative October 9, 2006.

SEC. 33. Section 56515 of the Education Code is amended to read:

56515. (a) In addition to the provisions of Chapter 6.5 (commencing with Section 49060) of Part 27, the confidentiality of personally identifiable information about individuals with exceptional needs shall be governed and protected in accordance with *Section 1232g of Title 20 of the United States Code, Part 99 (commencing with Section 99.1) of Title 34 of the Code of Federal Regulations, and the provisions of Sections 300.560 300.229 and 300.611 to 300.577 300.627*, inclusive, of Title 34 of the Code of Federal Regulations, including, notice to parents, access rights, records on more than one child, lists and types of locations of information, parental consent regarding the disclosure of personally identifiable information, fees for copies of records, amendment of records at ~~parent's~~ *the request of a parent*, opportunity for a hearing, safeguards, destruction of information, children's privacy rights, enforcement, and disciplinary information about an individual with exceptional needs.

(b) Pursuant to ~~paragraph (3) of subsection (b) of~~ Section 300.500 300.32 of Title 34 of the Code of Federal Regulations, "personally identifiable," as used in this part, includes all of the following information:

(1) The name of the child, the ~~child's~~ *parent of the child*, or other family member.

(2) The address of the child.

(3) A personal identifier, including, but not limited to, the ~~child's~~ social security number *of the child*, a pupil number, a list of personal characteristics, or other information that would make it possible to identify the child with reasonable certainty.

(c) (1) In accordance with ~~subsection (b) of~~ Section 300.571 300.622 of Title 34 of the Code of Federal Regulations, an agency or institution subject to Section 99.1 of Title 34 of the Code of Federal Regulations shall not release information from the education records of an individual with exceptional needs to

1 participating agencies without the consent of the parent or guardian,
2 unless authorized to do so under ~~Section 99.1~~ Part 99 (commencing
3 with Section 99.1) of Title 34 of the Code of Federal Regulations.
4 *Except as provided in paragraphs (2) and (3), parental consent is*
5 *not required before personally identifiable information is released*
6 *to officials of participating agencies for purposes of meeting a*
7 *requirement of this part or Part 300 (commencing with Section*
8 *300.1) of Title 34 of the Code of Federal Regulations.*

9 (2) *Parental consent, or the consent of an eligible child who*
10 *has reached the age of 18 years, shall be obtained before*
11 *personally identifiable information is released to officials of*
12 *participating agencies providing or paying for transition services*
13 *in accordance with Section 300.321(b)(3) of Title 34 of the Code*
14 *of Federal Regulations.*

15 (3) *If a child is enrolled, or is going to enroll in a private school*
16 *that is not located in the local educational agency of the residence*
17 *of the parent, parental consent shall be obtained before any*
18 *personally identifiable information about the child is released*
19 *between officials in the local educational agency where the private*
20 *school is located and officials in the local educational agency of*
21 *the residence of the parent.*

22 SEC. 34. Section 56600.6 of the Education Code is amended
23 to read:

24 56600.6. (a) ~~The superintendent~~ Superintendent shall ensure
25 that pupil and program performance results are monitored at the
26 state and local levels in order to comply with ~~paragraph (16) of~~
27 ~~subsection (a) of Section 1412~~ Section 1412(a)(15) of Title 20 of
28 the United States Code by evaluating pupil performance against
29 key performance indicators. As necessary, other data may be
30 collected to support the state's participation in national studies and
31 evaluations described in ~~subsection (a) of Section 1474~~ Section
32 1474(a) of Title 20 of the United States Code.

33 (b) *The Superintendent shall monitor, provide technical*
34 *assistance, and enforce this part, and Part B of the federal*
35 *Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400*
36 *et seq.) in accordance with Section 1416 of Title 20 of the United*
37 *States Code, and Subpart F (commencing with Section 300.600)*
38 *of Title 34 of the Code of Federal Regulations, and annually report*
39 *to the United States Department of Education on performance.*

1 (c) Pursuant to Section 300.600(b) of Title 34 of the Code of
2 Federal Regulations, the primary focus of the state's monitoring
3 activities shall be on the following:

4 (1) Improving educational results and functional outcomes for
5 all individuals with exceptional needs.

6 (2) Ensuring that public agencies meet the program
7 requirements under this part and under Part B of the federal
8 Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400
9 et seq.), with a particular emphasis on those requirements that are
10 most closely related to improving educational results for
11 individuals with exceptional needs.

12 (d) As part of state monitoring and enforcement, the
13 Superintendent shall use quantifiable indicators and qualitative
14 indicators as are needed to adequately measure performance in
15 the indicators established by the United States Secretary of
16 Education, and in the following priority areas specified in Section
17 300.600(d) of Title 34 of the Code of Federal Regulations:

18 (1) Provision of a free appropriate public education in the least
19 restrictive environment.

20 (2) State exercise of general supervision, including child find,
21 effective monitoring, the use of resolution meetings, mediation,
22 and a system of transition services as defined in Section 1437(a)(9)
23 of Title 20 of the United States Code and in Section 300.43 of Title
24 34 of the Code of Federal Regulations.

25 (3) Disproportionate representation of racial and ethnic groups
26 in special education and related services, to the extent the
27 representation is the result of inappropriate identification.

28 (e) As part of the performance plan of the state, as required in
29 Section 300.601 of Title 34 of the Code of Federal Regulations,
30 the Superintendent shall collect valid and reliable information as
31 needed to report annually to the United States Secretary of
32 Education.

33 SEC. 35. Section 56841 of the Education Code is amended to
34 read:

35 56841. (a) Federal funds available through Part B of the federal
36 Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400
37 et seq.) and appropriated through the annual Budget Act shall only
38 be used as follows:

39 (1) For the excess costs of providing special education and
40 related services to individuals with exceptional needs.

(2) To supplement state, local, and other federal funds and not to supplant those funds.

(b) Except as provided in subdivisions (c) and (d), the funds shall not be used to reduce the level of expenditures for the education of individuals with exceptional needs made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

(c) Notwithstanding subdivision (b), a local educational agency may reduce the level of expenditures from local funds where the reduction is attributable to the following:

(1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel.

(2) A decrease in the enrollment of individuals with exceptional needs.

(3) The termination of the obligation of the local educational agency, consistent with this part, to provide a program of special education to an individual or individuals with exceptional needs that is an exceptionally costly program, as determined by the Superintendent, because any of the following is applicable:

(A) The child has left the jurisdiction of the local educational agency.

(B) The child has reached the age at which the obligation of the local educational agency to provide a free appropriate public education to the child has terminated.

(C) The child no longer needs the program of special education.

(4) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of facilities.

(d) Notwithstanding the provisions of paragraph (2) of subdivision (a) and subdivision (b), for any fiscal year in which the allocation received by a local educational agency under ~~subsection (f) of Section 1411~~ *Section 1411(f)* of Title 20 of the United States Code exceeds the amount the local educational agency received for the previous fiscal year, the local educational agency may reduce the level of expenditures otherwise required ~~by clause (iii) of subparagraph (A) of paragraph (2) of subsection (a) of Section 1413~~ *Section 1413(a)(2)(A)(iii)* of Title 20 of the United States Code by not more than 50 percent of the amount of the excess. If a local educational agency exercises the authority under this subdivision, the local educational agency shall use an

1 amount of local funds equal to the reduction in expenditures under
2 this subdivision to carry out activities authorized under the federal
3 Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec.
4 6301 et seq.).

5 (e) Notwithstanding subdivision (d), if the Superintendent
6 determines that a local educational agency is unable to establish
7 and maintain programs of free appropriate public education that
8 meet the requirements of ~~subsection (a) of Section 1413~~ *Section*
9 *1413(a)* of Title 20 of the United States Code, or if the
10 Superintendent has taken action against the local educational
11 agency under Section 1416 of Title 20 of the United States Code,
12 the Superintendent shall prohibit the local educational agency from
13 reducing the level of expenditures under subdivision (d) for that
14 fiscal year.

15 (f) The amount of funds expended by a local educational agency
16 under ~~subsection (f) of Section 1413~~ *Section 1413(f) of Title 20* of
17 the United States Code for ~~early intervention~~ *intervening* services
18 shall count toward the maximum amount of expenditures the local
19 educational agency may reduce under subdivision (d) ~~of this~~
20 ~~section~~.

21 (g) Notwithstanding ~~subparagraph (A) of paragraph (2) of~~
22 ~~subsection (a) of Section 1413~~ *Section 1413(a)(2)(A)* of Title 20
23 of the United States Code or any other provision of the federal
24 Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400
25 et seq.), a local educational agency may use federal special
26 education funds for any fiscal year to carry out a schoolwide
27 program under Section 1114 of the federal Elementary and
28 Secondary Education Act of 1965 (20 U.S.C. Sec. 6301 et seq.),
29 except that the amount so used in any such program shall not
30 exceed the number of individuals with exceptional needs
31 participating in the schoolwide program, multiplied by the amount
32 received by the local educational agency under this article for that
33 fiscal year, and divided by the number of individuals with
34 exceptional needs in the jurisdiction of that local educational
35 agency.

36 (h) *(1)* Notwithstanding subdivisions (a) to (g), inclusive, a
37 local educational agency may also use federal special education
38 funds for other purposes specified in ~~subsection (a) of Section~~
39 ~~1413~~ *Section 1413(a)* of Title 20 of the United States Code.

1 (2) *In accordance with Section 300.208(b) of Title 34 of the*
2 *Code of Federal Regulations, a local educational agency may use*
3 *federal funds received under this article to purchase appropriate*
4 *technology for recordkeeping, data collection, and related case*
5 *management activities of teachers and related services personnel*
6 *providing services described in the individualized education*
7 *program of individuals with exceptional needs, that is needed for*
8 *the implementation of those case management activities.*

9 SEC. 36. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 this act implements a federal law or regulation and results only in
12 costs mandated by the federal government, within the meaning of
13 Section 17556 of the Government Code.

14 SEC. 37. This act is an urgency statute necessary for the
15 immediate preservation of the public peace, health, or safety within
16 the meaning of Article IV of the Constitution and shall go into
17 immediate effect. The facts constituting the necessity are:

18 In order to ensure that pupils with disabilities receive services,
19 to ensure that state law is in conformity with the federal Individuals
20 with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and
21 implementing regulations that became effective on October 13,
22 2006, and with the federal Family Educational Rights and Privacy
23 Act (20 U.S.C. Sec. 1232g), and to ensure that California continues
24 to receive federal funding to pay for services provided to pupils
25 with disabilities at the earliest possible time, it is necessary that
26 this act take effect immediately.